Supreme Court, U.S.
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No. ____

In the Supreme Court of the United States

JAMES OTTO; SHIRLEY A. OTTO;
FRED P. GROVE; ETHYL J. GROVE,
Petitioners,

v.

WESTERN PENNSYLVANIA TEAMSTERS AND EMPLOYERS PENSION FUND; BOARD OF TRUSTEES OF WESTERN PENNSYLVANIA TEAMSTERS AND EMPLOYERS PENSION FUND,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Are ambiguities in an ERISA pension plan summary plan description to be construed in favor of plan participants?

2. Are courts permitted to determine that unambiguous terms like "both" and "last" contained in pension plan documents are ambiguous?

3. Are courts permitted to ignore stipulations of parties and substitute facts more of their own liking?

PARTIES TO THE PROCEEDING

Petitioners

James Otto and Fred P. Grove, Petitioners, are retired participants of the Western Pennsylvania Teamsters and Employers Pension Fund. Shirley Otto and Ethyl J. Grove are the spouses of James Otto and Fred P. Grove, respectively and are beneficiaries of spousal survivors' benefits. None of the Petitioners is an affiliate of a publicly owned corporation.

Respondents

The Western Pennsylvania Teamsters and Employers Pension Fund is a jointly administered, multi-employer, employee benefit plan as is defined by 29 USC § 1002 (1) and (2) to provide retirement income to employees and their beneficiaries as is authorized by 29 USC § 186 (c).

The Board of Trustees of the Western Pennsylvania Teamsters Pension Fund is the administrator of the Western Pennsylvania Teamsters Pension Fund.

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PETITION FOR WRIT OF CERTIORARI

James Otto, Shirley A. Otto, Fred P. Grove, and Ethyl J. Grove respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit entered in this proceeding on February 11, 2005.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit appears at Appendix 3a to 12a and is reported at 127 F. Apx. 17, 2005 WL 332410 (3rd Cir.(Pa.)), 34 Employee Benefits Cas. 1566, Pens. Plan Guide (CCH) P 23990S.

The opinion of the District Court appears at Appendix 18a to 38a.

JURISDICTION

The Court of Appeals for the Third U. S. Circuit issued its opinion on February 11, 2005. A timely petition for rehearing En Banc was filed. The petition was overruled by order dated March 21, 2005. A copy of the Order Overruling Petition for Rehearing En Banc appears at Appendix 1a to 2a. Pursuant to Supreme Court Rule 13.1, this petition has been filed within 90 days of the denial of the Petition for Rehearing.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE

Constitutional provisions are not involved in this case.

This case involves the following statutes:

29 U. S. C. § 1021(a) provides in relevant part.

The administrator of each employee benefit plan shall cause to be furnished in accordance with section 1024(b) of this title to each participant covered under the plan and to each beneficiary who is receiving benefits under the plan--

(1) a summary plan description described in section 1022(a)(1) of this title; and

(2) the information described in sections 1024(b)(3) and 1025(a) and (c) of this title.

29 U. S. C. § 1022 provides in relevant part.

(a) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 1024(b) of this title. The summary plan description shall include the information described in subsection (b) of this section, shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) of this section shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with section 1024(b)(1) of this title.

(b) The summary plan description shall contain the following information: . . . a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; . . .

29 U. S. C. § 1102 (a) which provides in relevant part: "(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. . . ."

29 U. S. C. § 1102 (b) requires, "Every employee benefit plan shall . . . (4) specify the basis on which payments are made to and from the plan."

29 U. S. C. § 1102 is supplemented by 29 C. F. R. 2520.102-3 which requires, "The summary plan description *must accurately reflect the contents of the plan* . . . ." (italics added)

STATEMENT OF THE CASE

The Third U. S. Circuit Court of Appeals upheld a grant of summary judgment which was rendered upon stipulations of facts in favor of the Pension Plan and its Board of Trustees.

Petitioners brought suit pursuant to 29 U. S. C. § 1132 challenging the decision(s) of the Trustees to pay Petitioner James Otto the total of 14 "mini-pensions" and Petitioner Fred P. Grove the total of 10 "mini- pensions" instead of a single, larger pension benefit for each as is provided for in the Plan Document.

Grounding its decision on one of two contradictory examples contained in the Summary Plan Description of how benefits are calculated, the Circuit Court found, "One of these examples (the second) illustrates the calculation methodology employed by the Fund in determining Appellants' benefits. Because this example is included in the summary plan description, it represents an authoritative interpretation of

Section 4.4(a) and is binding on both the trustees and the plan participants." (Citation omitted) (Apx. 9a).

The Summary Plan Description of the Western Pennsylvania Fund describes how benefits are to be calculated.

. . .

2. Determine your Employer's **last** weekly contribution rate. The weekly contribution rate paid by your employer determines the amount of **the** Unit Multiplier utilized to calculate your benefits. Turn to Tables 1 through 7 and look for your Employer's **last** Contribution Rate Schedule. If your Contribution Rate Schedule is not listed on the Tables, the Fund Office will provide you with your Contribution Rate Schedule upon written request. . .

3. Find **your** Unit Multiplier for Normal Retirement Benefits by referring to Tables 1 through 7. If **your** Unit Multiplier is not listed on the Tables, the Fund Office will provide you with **your** Unit Multiplier upon written request.

4. Multiply **your** Unit Multiplier, as determined by Step 3, by your Credited Service. This is your estimated monthly benefit which will be paid to you each month for the rest of your life. . . . (Apx. 65a-66a)

The Summary Plan Description then provides the two examples to which the Circuit Court referred.

Assume that you estimate you will have earned 20 Years Of Credited Service when you retire at age 60 (your Normal Retirement Age) in 1999, and that your

> Unit Multiplier is $25. Multiplying 20 Years of Credited Service by the Unit Multiplier of $35 results in the monthly lifetime benefit of $700.
>
> Assume that your Employer contributed at the National Master Freight Level contribution rate schedule on your behalf, and you estimate that you will have earned 20 continuous Years of Credited Service when you retire at age 60 on January 1, 1999. Multiplying 20 Years of Credited Service by the Unit Multipliers (for the stated time periods) stated on Table 3, results in the monthly lifetime benefit of $1,531.50. (Apx. 66a-67a)

The second example cannot be reconciled with the first. Moreover the first example is absolutely consistent with Section 4.4(a) of the Plan Document which clearly provides:

> The monthly amount of Normal Pension granted a retiring Participant eligible for such benefit ... shall equal the product of (1) *the* Unit Multiplier determined in accordance with Appendix A herein, and (2) the Credited Service period of such Participant, *both* factors to be determined as of the Participant's Termination Date. (Appendix 8a) (Italics added)

Section 3.1(e) of the Plan Document also defines Termination Date. (proper noun):

> Termination Date. The term "Termination Date" as used herein shall mean **the date** on which a participant terminates his service in Covered Employment for any reason other than by death, disability, or retirement. For purposes of determining the Termination Date, a Participant's Termination Date shall be **the last day** of

> the period for which an Employer was required to make contributions on the Participant's behalf immediately preceding a One Year Interruption of Service. (Apx. 58a)

The parties stipulated that Petitioner James Otto had *one* Termination Date, December 31, 1999 (Stipulation of Facts ¶ 22, Apx. Pg. 47a) and Petitioner Fred P. Grove and *one* Termination Date, Stipulation of Facts ¶ 29, Apx. 51a)

The Pension Plan through its Trustees did not use a two factor calculation to calculate the Normal Retirement Benefits[1]. Instead, it employed 14 unit multipliers as of 14 termination dates for Petitioner James Otto and 10 unit multipliers as of 10 termination dates for Petitioner Fred P. Grove.

The Circuit Court found,

> "Notwithstanding the parties' "plain meaning arguments, Section 4.4(a) is ambiguous. It simply does not speak to the relevant question – whether monthly pension benefits are to be calculated using a single "unit multiplier" corresponding to the applicant's last employer contribution rate, or using a variety of "unit multipliers" corresponding to the

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[1] Prior to appropriate reductions for reciprocity with the service of Petitioners James Otto and Fred P. Grove in the Central Pennsylvania Teamsters Pension Fund and reductions for survivors' benefits for Petitioners Shirley A. Otto and Ethyl J. Grove.

contribution rate at relevant employment termination dates."[2] (Apx. 8a -9a, footnotes omitted)

The Circuit Court then resolved the perceived ambiguity in favor of the Pension Plan and its Trustees stating that their interpretation was "reasonable."

REASONS WHY THE WRIT SHOULD BE GRANTED

1. Granting the writ will resolve a conflict created by the Circuit Court below among the Circuit Courts of Appeals as to whether ERISA plan administrators have the discretionary authority to resolve ambiguities in summary plan descriptions.

The two methods of calculating benefits in the Summary Plan Description cannot be reconciled.

By deciding that one of two contradictory examples in the Western Pennsylvania Teamsters Pennsylvania Pension Plan Summary Plan Description controls the entitlement of plan participants to benefits, the Third Circuit has created a split with those circuit courts which hold that ambiguities in a summary plan description of an ERISA plan are to be resolved in favor of the plan participant. *See, Haymond v. Eighth District Electrical Benefit Fund*, 36 F. Appx. 369, 374, (10th Cir. 2002), *McCall v. Burlington Northern Santa Fe Company*, 237 F. 3d. 506, 512, (5th Cir. 2000), *Rhorer v. Raytheon Engineers and Constructors, Inc.*, 181 F. 3d. 634,

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[2] Fundamental error in the decision of the Circuit Court is apparent in its use of the plural "termination dates" contrary to the Plan's definition of Termination Date and the stipulations of the parties.

640, 641, (5th Cir. 1999), *Chiles v. Ceridan Corp.*, 95 F.3d 1505, 1518, (10th Cir. 1996), *Hansen v. Continental Ins. Co.*, 940 F. 2d, 982, (5th Cir. 1991).

In this case, the Third Circuit in conflict with those decisions which hold that even under an abuse of discretion standard of review[3], courts do not accord Plan Administrators the authority to resolve ambiguities in a summary plan descriptions against the plan participants.

> The federal regulations that govern summary plan descriptions provide that a summary plan description "must not have the effect to misleading, misinforming or failing to inform participants and beneficiaries." 29 C.F.R. § 2520.102- 2(b). Also, the summary plan description must contain "a statement clearly identifying circumstances which may result in disqualification, ineligibility, or denial ... of any benefits that a participant or beneficiary might otherwise reasonably expect the plan to provide." 29 C.F.R. § 2520.102-3(*l*). Finally, the administrative regulations expressly require that "exceptions, limitations, reductions, or restrictions of plan benefits" be clearly noted. 29 C.F.R. § 2520.102-2(b).
>
> Thus, the relevant administrative regulations dictate that restrictive provisions, like the active work requirement, be properly disclosed in the summary

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[3]*Haymond*, *supra* at 372, involves a plan which conferred complete discretion on the plan's trustees to construe and interpret the plan. *McCall*, *supra*, at 512 was reviewed for an abuse of discretion, as was *Rhorer*, *supra*, at 643.

> plan description. In this case, however, it appears that Raytheon violated those regulations by providing Mr. Rhorer with an ambiguous summary plan description that did not clearly indicate that optional life insurance is restricted by an active work requirement. The second factor thus favors a finding that Raytheon abused its discretion. *Rhorer*, *supra*, at 643.

The decision of the Circuit Court in this case is a dramatic and dangerous departure from the prevailing law regarding ambiguities summary plan descriptions which prior to the decision below held that, "... any ambiguities must be resolved in the employee's favor." *McCall*, *supra*, at 512. Granting the instant writ will insure that ERISA plan administrators adhere to the law and draft summary plan descriptions which unequivocally describe how the benefits to which plan participants are entitled are to be calculated.

2. Granting the writ will insure that courts will conduct a proper review of ERISA plan documents before *sua sponte* declaring that ERISA plan provisions are ambiguous and thus allowing administrators to retroactively rewrite ERISA Plans.

Long ago Third Circuit had determined, "The determination of whether a term is ambiguous is a question of law." *Mellon Bank, N.A. v. Aetna Business Credit, Inc.*, 619 F.2d 1001, 1011 (3d Cir.1980). "A term is ambiguous if it is subject to reasonable alternative interpretations." *Id. Taylor v. Continental Group Change in Control Severance Plan*, 933 F. 2d 1227, 1232 (3rd Cir. 1991).

"Those rules direct us to interpret ERISA plans in an ordinary and popular sense as would a person of average

intelligence and experience." *Neuma Incorporated v. AMP Incorporated*, 259 F. 3d 864, 872 (7th Cir. 2001).

The Circuit Court, however, discounted the fact that the parties agreed that Section 4.4(a) of the Plan was not ambiguous, and ignored the fact that Section 4.4(a) of the Plan unequivocally uses the words, " . . . *both* factors to be determined as of the Participant's Termination Date."

The Circuit Court concluded:

> "Notwithstanding the parties' "plain meaning arguments, Section 4.4(a) is ambiguous. It simply does not speak to the relevant question – whether monthly pension benefits are to be calculated using a single "unit multiplier" corresponding to the applicant's last employer contribution rate, or using a variety of "unit multipliers" corresponding to the contribution rate at relevant employment termination dates." (Apx. 8a - 9a , footnotes omitted)

The Circuit Court ignored the parties stipulation that Petitioner James Otto had *one* Termination Date, December 31, 1999 (Stipulation of Facts ¶ 22, Apx. Pg. 47a) and Petitioner Fred P. Grove and one Termination Date, (Stipulation of Facts ¶ 29 Apx. 51a).

The Circuit Court also ignored the Plan's own definition of "Termination Date," which is defined as a single event, "... the last day a contribution is required to be made by your Employer on your behalf to the Plan. (Summary Plan Description, Apx. 63a).

"Both" can only mean two factors are to be used in the benefit calculation. Persons of average intelligence and

experience could not conclude that "both" means the sum of a 28 factor calculation as was done for Mr. Otto and the sum of a 20 factor calculation as was done for Mr. Grove?

The "last" day only occurs once. Persons of average intelligence and experience could only conclude that Mr. Otto had, as was stipulated, a single termination date, not 14 termination dates as were utilized to reduce his earned benefits. Persons of average intelligence and experience could only conclude that Mr. Grove had a single termination date, not 10 termination dates as were utilized to reduce his earned benefits.

Licensing ERISA Plan administrators to substitute their *post hoc* justifications for administering pension and benefit plans contrary to the explicit terms of plan documents is tantamount to allowing the plan administrators to retroactively rewrite the plan documents. Such a practice should not be condoned.

CONCLUSION

Pension plan participants should not have to depend on which of two contradictory examples contained in a plan's summary plan description control the amount of retirement benefits they receive. Conversely, pension plan administrators should not, as the Circuit Court concluded, be permitted to pick and choose among contradictory examples in summary plan descriptions of how retirement benefits are to be calculated and thus fail to pay benefits which were reasonably expected by employees who earned such benefits by a lifetime of work.

Courts, in interpreting pension plan documents should not be permitted to determine that simple words like "both" mean more than two and "last" can happen more than a single time.

Courts should also not be able to ignore stipulations of parties, like those at bar, who stipulate that Petitioners had only a single termination date each and strain to find "reasonable" conclusions that each of the employees had multiple termination dates.

Granting the writ will insure that the review of decisions of plan administrators will prevent the abuses apparent in this case.

The judgment of the Circuit Court should be reversed and this case should be remanded with instructions that the conflict in the Summary Plan Description should be resolved in favor of the Petitioners.

Respectfully Submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-2307

(D.C. Civ. No. 03-cv-00140)

[March 18, 2005]

JAMES OTTO; SHIRLEY A. OTTO;
FRED P. GROVE; ETHYL J. GROVE,
Appellants,

v.

WESTERN PENNSYLVANIA
TEAMSTERS AND EMPLOYERS
PENSION FUND; BOARD OF
TRUSTEES OF WESTERN
PENNSYLVANIA TEAMSTERS
AND EMPLOYERS PENSION FUND

SUR PETITION FOR REHEARING

Present: SCIRICA, Chief Judge, SLOVITER, NYGAARD, ALITO, ROTH, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER and VAN ANTWERPEN, Circuit Judges.

The petition for rehearing filed by appellants in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for reheating, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

/s/Anthony J. Scirica
Chief Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-2307

[Filed, February 11, 2005]

JAMES OTTO; SHIRLEY A. OTTO;
FRED P. GROVE; ETHYL J. GROVE,
Appellants

v.

WESTERN PENNSYLVANIA
TEAMSTERS AND EMPLOYERS
PENSION FUND; BOARD OF
TRUSTEES OF WESTERN
PENNSYLVANIA TEAMSTERS
AND EMPLOYERS PENSION FUND

OPINION OF THE COURT

SCIRICA, Chief Judge.

Invoking ERISA, 29 U.S.C. § 1001 *et seq.*, Appellants challenge the calculation of their pension benefits by the Western Pennsylvania Teamsters and Employers Pension

Fund ("the Fund"). The Magistrate Judge held the Fund's calculation of benefits was proper and granted summary judgment in its favor.[1] We will affirm.

I.

Because we write only for the parties, an abbreviated recitation of the facts will suffice. Appellants James Otto and Fred P. Grove are retired participants in the Western Pennsylvania Teamsters and Employers Pension Fund. Their wives, also Appellants, are beneficiaries entitled to survivor benefits under the plan. Over the course of their respective teamster careers, Otto and Grove worked for several employers under several different labor contracts, resulting in a complex matrix of pension fund contributions. Specifically, Mr. Otto is credited with twenty-six years of service at fourteen different employer contribution rates. Mr. Grove is credited with over nineteen years of service at ten different contribution rates.

The Fund itself, in existence since 1958, is a pension trust administered by a ten-member board of trustees. The board is comprised of five members appointed by contributing employers and five members appointed by local teamster unions. The trustees are fiduciaries under 29 U.S.C. § 1104(a)(1) and are required to discharge their duties solely in the interest of the participants and beneficiaries of the Fund. Operation of the Fund is governed by a trust agreement and by the terms and conditions of the corresponding pension plan - both of which are summarized for participants in a summary plan description. *See* 29 U.S.C. § 1022 (requiring

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[1] The parties consented to proceedings before a Magistrate Judge under 28 U.S.C. § 636(c)(1).

that participants receive a summary plan description). According to the trust agreement, the trustees have "full and exclusive authority" to resolve controversies arising under the plan and to construe the terms and conditions of the plan.

Upon their retirement, in 1999 and 2001 respectively, Otto and Grove applied for a pension. The Fund actuary determined that Mr. Otto was entitled to a monthly benefit of $1,080.65 and that Mr. Grove was entitled to $535.50.[2] In both cases, the Fund calculated the monthly benefit according to a "unit multiplier" formula, under which the applicant's years of teamster service are multiplied by a factor corresponding to the employer contribution rates for the relevant period of service. In other words, the Fund multiplied Otto and Grove's years of service at a given employer contribution rate by the "unit multiplier" corresponding to that rate. Mr. Otto's monthly pension was based on fourteen different multipliers, while Mr. Grove's was based on ten different multipliers.

Mr. Otto and Mr. Grove disagreed with the Fund's calculation and, as authorized under the plan, appealed to the trustees. After hearings on the matter, a trustee sub-committee submitted a report to the trustees recommending the appeals be denied. The trustees, at their October 9, 2002 meeting, adopted the sub-committee recommendations and unanimously

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[2] These amounts represent the pension contribution (without adjustment for survivor benefits) of the Western Pennsylvania Teamsters Fund. Mr. Otto and Mr. Grove are entitled to additional reciprocal benefits from the Central Pennsylvania Teamsters Fund. According to the Western Pennsylvania Fund calculations, Mr. Otto and Mr. Grove are entitled to total monthly pension benefits - including Central Pennsylvania Fund contributions - in the amount of $2,006.78 and $1,104.13, respectively.

denied the appeals. Otto and Grove were informed of the decision by letter, and were subsequently provided with a written explanation from the Fund's counsel of the basis for the trustees' action.

Having exhausted all remedies under the trust agreement, Otto and Grove filed suit under ERISA § 502(a) in the District Court for the Western District of Pennsylvania. *See* 29 U.S.C. § 1132(a)(1)(B) (providing federal cause of action "to recover benefits due" under an employee benefit plan); 29 U.S.C. § 1132(e)-(f) (conferring federal jurisdiction). By consent of the parties, and pursuant to 28 U.S.C. § 636(c)(1), the case was assigned to a Magistrate Judge, who on cross-motions for summary judgment entered judgment in favor of the Fund. We have jurisdiction under 28 U.S.C. §§ 636(c)(3) and 1291. Our review is plenary. *Stratton v. E.I. DuPont de Nemours & Co.*, 363 F.3d 250, 253 (3d Cir. 2004).

II.

The issue is whether the Fund's method of calculating pension benefits is contrary to the terms of the pension plan and/or contrary to ERISA. *See Smith v. Contini*, 205 F.3d 597, 602 (3d Cir. 2003) ("We are required to enforce the plan as written unless we can find a provision of ERISA that contains a contrary directive.") (citations omitted). Appellants challenge the Fund's pension formula, contending the plan requires a calculation based solely on the unit multiplier corresponding to the contribution rate of the applicant's last employer. For Mr. Otto, this alternate methodology would increase his monthly Western Pennsylvania Fund benefit (without adjustment for survivor benefits) from $1,080.65 to

$3,003.21. Mr. Grove's monthly benefit (without survivor adjustment) would increase from $ 535.50 to $1,206.33.[3]

A.

Absent evidence of a structural conflict of interest on the part of the plan administrator, *see Pinto v. Reliance Standard Life Ins. Co.*, 214 F.3d 377 (3d Cir. 2000), we apply "the deferential 'arbitrary and capricious' standard" in reviewing the discretionary decisions of an ERISA plan administrator. *McElroy v. SmithKline Beecham Health & Welfare Benefits Trust Plan*, 340 F.3d 139, 141 (3d Cir. 2003). Here, the plan expressly vests the trustees with "full and exclusive authority" to interpret the plan and to resolve controversies arising under it. There is no evidence of a conflict of interest. The board, which in this case voted unanimously, is jointly comprised of employer and teamster trustees with a fiduciary duty to manage the trust for the benefit of plan participants and beneficiaries. Trustee decisions under this framework - which is far removed from the structural conflict we observed in *Pinto* - warrant deferential arbitrary and capricious review. *Bill Gray Enters., Inc. Employee Health and Welfare Plan v. Gourley*, 248 F.3d 206, 216 (3d Cir. 2001) (absent "specific evidence of bias or bad-faith," discretionary plan decisions are reviewed under the arbitrary and capricious standard).[4]

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[3]The methodology advocated by Appellants would also increase their reciprocal monthly benefit from the Central Pennsylvania Fund. *See supra* note 1. Mr. Otto's total monthly benefit (without survivor adjustment) would increase from $2,006.78 to $5,577. Mr. Grove's total monthly benefit (without survivor adjustment) would increase from $1,104.13 to $2,487.27.

[4]Appellants contend "arbitrary and capricious" deference is inappropriate because the trustees explained their decision in a

B.

The plan provision at issue, Section 4.4(a), reads as follows:

> The monthly amount of Normal Pension granted a retiring Participant eligible for such benefit . . . shall equal the product of (1) the Unit Multiplier determined in accordance with Appendix A herein, and (2) the Credited Service period of such Participant, both factors to be determined as of the Participant's Termination Date.

Notwithstanding the parties' "plain meaning" arguments, Section 4.4(a) is ambiguous.[5] It simply does not speak to the relevant question - whether monthly pension benefits are

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letter from counsel. In Appellants' view, the trustees' "delegation" of this duty suggests that counsel rather than the trustees decided the appeal. Appellants cite *Moench v. Robertson*, 62 F.3d 553, 567 (3d Cir. 1995) as precluding deference unless the plan administrator "in fact" interprets the plan. Their argument lacks merit. First, the record demonstrates that a trustee sub-committee prepared a report and recommendation on Appellants' claims, and that the trustees themselves reviewed and unanimously adopted the sub-committee report. Second, Appellants fail to cite a single case in support of the proposition that "delegation" of legal correspondence to counsel deprives the trustees of the deference to which they are otherwise entitled. It is neither remarkable nor objectionable that the Fund employed counsel to assist in the analysis of a legal question and subsequently to communicate, on behalf of the trustees, the legal basis for a benefits decision.

[5] The Magistrate Judge implicitly concluded Section 4.4(a) is ambiguous, then expressly held that the Fund's interpretation is reasonable.

calculated using a single "unit multiplier" corresponding to the applicant's last employer contribution rate, or using a variety of "unit multipliers" corresponding to the contribution rate at the relevant employment termination dates.[6] Faced with an ambiguous provision, we review whether the trustees' interpretation is reasonable. *Gourley*, 248 F.3d at 218.

We agree with the Magistrate Judge that it is reasonable. In the trustee sub-committee's report and recommendation on the Otto/Grove appeal, which the trustees reviewed and unanimously adopted, the sub-committee cited as justification for the Fund's methodology the benefit calculation examples found in the summary plan description. One of these examples illustrates the calculation methodology employed by the Fund in determining Appellants' benefits. Because this example is included in the summary plan description, it represents an authoritative interpretation of Section 4.4(a) and is binding on both the trustees and the plan participants. *Burstein v. Ret. Account Plan for Employees of Allegheny Health Educ. and Research Found.*, 334 F.3d 365, 382 (3d Cir. 2003) (holding summary plan description is a binding element of the plan). In sum, the trustees' methodology is a reasonable interpretation of Section 4.4(a) and is consistent with the approach explained in the summary plan description.

Appellants also object to the specific rate multipliers used to calculate their benefits, contending the Fund applied multipliers different from those found in Table 3 of the summary plan description. We are puzzled by Appellants' position on this issue, because the purported discrepancy

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[6] Nor does Appendix A resolve the question. Appendix A sets forth the method for determining and adjusting "unit multipliers," but does not explain whether a single multiplier or a combination of multipliers are employed in calculating benefits.

appears to cut in their favor. The multipliers actually employed by the Fund are higher than those found in Table 3 - yielding a larger monthly benefit than Appellants would otherwise be entitled to receive. In any event, the discrepancy is justified. Appendix A to the plan authorizes (indeed requires) case-specific adjustments to the unit multiplier based on the applicant's employer contribution rate. Where an employer contributed to the pension fund at a specific rate, the Fund adjusts the corresponding unit multiplier accordingly. Appellants cite no evidence that the Fund erred under Appendix A in its adjustments. Moreover, given that the Fund appears to have adjusted the unit multipliers upward from those listed in Table 3 - to the benefit of Appellants - we find nothing arbitrary or capricious in its decision.

Appellants' remaining challenges - including objections based on judicial estoppel, 29 U.S.C. § 1022 (requiring that the summary plan description be understandable to the average participant), and the Fund's 1995 denial of reciprocal Central Pennsylvania Fund benefits to Mr. Grove - are without merit and must fail.

III. Conclusion

We will affirm the judgment of the Magistrate Judge.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 04-2307

[January 24, 2005]

JAMES OTTO; SHIRLEY A. OTTO; FRED P. GROVE; ETHYL J. GROVE, Appellants	)
v.	)
WESTERN PENNSYLVANIA TEAMSTERS AND EMPLOYERS PENSION FUND; BOARD OF TRUSTEES OF WESTERN PENNSYLVANIA TEAMSTERS AND EMPLOYERS PENSION FUND	)

JUDGMENT

SCIRICA, *Chief Judge,* RENDELL and FISHER, Circuit Judges.

This cause came to be considered on the record from the United States District

Court for the Western District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on January 24, 2005. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court entered April 21, 2004, be, and the same is hereby affirmed. Costs taxed against appellants. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ Marcia M. Waldron

Clerk
DATED: February 11, 2005

United States Court of Appeals for the Third Circuit

Date: February 11, 2005

To: Konrad Kuczak, Esq.
*Charles J. Streiff, Esq.

Re: **Case No. 04-2307 Otto vs. Western PA Teamsters**

The purpose of this communication is to provide notice that judgment has been entered, and information about post-judgment practice.

NOTICE OF JUDGMENT

This Court's opinion was filed and **judgment was entered today** pursuant to Rule 36 of the Federal Rules of Appellate Procedure [FRAP] in the above referenced case. A copy of the opinion and judgment are enclosed.

PETITION FOR REHEARING [FRAP 35&40, Third Circuit LAR 35, IOP 9]

Timing. A petition for panel rehearing and/or en banc rehearing may be filed within 14 days of the date of entry of judgment, unless the appeal is in a civil case where the United States is a party, in which case the petition for rehearing may be filed within 45 days of entry of judgment. A petition from counsel or a non-incarcerated litigant must be **received** in the clerk's office (not placed in the mail) within the time permitted.

Incarcerated petitioners should include the following statement: "I certify that this document was given to prison officials, postage prepaid, on [date] for forwarding to the

Court of Appeals. I certify under penalty of perjury that the foregoing is true and correct. [signature]" 28 U.S.C. Sec. 1746. The petition must be mailed within the time permitted. The petition must be served on all parties.

Criteria and Required Statement [*See* FRAP 35(b)&40(a)(2), Third Circuit IOP 9.]
[Petitions for Rehearing en Banc are NOT favored.]

- **Panel Rehearing.** The petition must state with particularity each point of fact and law the panel overlooked or misapprehended.

- **En Banc Rehearing**. The petition must begin with a statement that either:

  - the panel decision conflicts with a decision of the United States Supreme Court or the Third Circuit, with citation(s), and consideration by the full court is therefore necessary;

  - or the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated.

- **Required statement by counsel under LAR 35.1:**

  Counsel must preface the petition with the statement, "I express a belief, based on a reasoned professional judgment that... [the criteria of Rule 35(b) (I) above are met.]"

Presumption that both Panel and En Banc Rehearing have Been Requested [Third Circuit IOP 9.5.1]

Unless it is explicitly stated that the rehearing requested is from the panel only, it will be presumed that the petition requests both panel and en banc rehearing.

Page Limits. The 15 page limit is strictly enforced. If both panel and en banc rehearing are requested, the Court prefers that a single petition be filed. If separate petitions are filed, they will be treated as a single document and will be subject to a combined 15 page limit. [FRAP 35(b) (2)&(3).] No answer to a petition for rehearing is permitted unless requested by the Court. If an answer is requested, it is also limited to 15 pages.

Number of Copies. An original plus 3 copies are required for a petition for panel rehearing; an original plus 14 are required for a petition for en banc rehearing.

Attachments. A copy of the judgment and opinion or order **must** be attached. No **other attachments** are permitted without leave of the Court. [LAR 32.3(b) & 35.2]

Electronic Filing. Please refer to the Court's website www.ca3.uscourts.gov for instructions on the electronic filing of petitions for rehearing.

BILL OF COST [FRAP 39, Third Circuit LAR 39]
Filing Time. A party to whom costs are allowed who desires taxation of costs must file a bill of costs within 14 days after entry of judgment. The bill of costs must be received in the clerk's office within the 14 day period. Consult Rule 39 of the Federal Rules of Appellate Procedure and the judgment in your case to determine if you may ask for costs.

Form. A request for costs must include either an itemized statement from a printer or an affidavit as required in the

attached bill of costs form. [See Third Circuit LAR 39.3 for allowable costs.]

MANDATE [frap 41]
The mandate is the official notification to the district court that the court of appeals has entered judgment.

Issuance Time. The mandate issues 7 days after the time for filing a petition for rehearing has expired. [FRAP 41(a)] If no timely petition for rehearing has been filed, the mandate will issue 21 days after entry of judgment, unless the United States is a party, in which case the mandate will issue 52 days after entry of judgment. If a motion for stay of mandate is filed, the mandate will issue 7 days after an order denying the motion.

If the mandate has been stayed pending disposition of a petition for writ of certiorari, the mandate will issue immediately upon notice by the Supreme Court that the petition has been denied or that this Court has been affirmed. [FRAP 41(d) (2) (D)]

Effective Date of Mandate [FRAP 41(c)]. The Court's mandate is effective when issued. Ordinarily, the mandate shall consist of a certified copy of the judgment with any opinion and instructions as to costs attached, in lieu a separate, formal mandate.

Stay of Mandate [FRAP 41(c)]. The timely filing of a petition for panel rehearing, rehearing en banc or a motion to stay the mandate will automatically stay the mandate.

Filing a motion to stay the mandate is not a prerequisite for filing a petition for a writ of certiorari to the Supreme Court. Such a motion shall be made only where issuance of the

mandate would have a **substantive effect** [See IOP 10.8.2], in which case the motion must be filed promptly.

A motion to stay the mandate must be served on all parties, and must demonstrate that a petition for a writ of certiorari would present a substantial question and that there is good cause for a stay. [FRAP 41(d) (2) (A)]

The stay may not exceed 90 days, unless either:

- the stay is extended for good cause shown; or
- a petition for a writ of certiorari is filed within the stay period.

Please consult the Rules of the Supreme Court of the United States regarding the timing and filing of a petition for certiorari. Case managers can not advise you concerning Supreme Court Rules.

MARCIA M. WALDRON
Clerk

/s/ Chiquita Dyer
By: Chiquita Dyer
Case Manager
Direct Dial 267-299-4919

*Enclosure(Bill of Costs Form)
Rev. 7/01

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

No. 03-140J

[Filed April 23, 2004]

JAMES OTTO, SHIRLEY A. OTTO, FRED P. GROVE and ETHYL J. GROVE, Plaintiffs,	)
v.	)
WESTERN PENNSYLVANIA TEAMSTERS AND EMPLOYERS PENSION FUND and the BOARD OF TRUSTEES of the WESTERN PENNSYLVANIA TEAMSTERS AND EMPLOYERS PENSION FUND, Defendants.	)

OPINION AND ORDER

MITCHELL, Magistrate Judge.

Presently before the Court are cross-motions for summary judgment. For the reasons discussed below, the plaintiffs' motion for summary judgment (Docket No. 13) is denied, and the defendants' motion for summary judgment (Docket No. 18) is granted.

Plaintiffs James Otto and Fred P. Grove are retired participants in defendant Western Pennsylvania Teamsters and Employers Pension Fund (the "Pension Fund"). Their wives, plaintiffs Shirley A. Otto and Ethyl J. Grove, are beneficiaries entitled to survivor benefits from the Pension Fund due to there husbands participation therein. Pension contributions were made to the Pension Fund on behalf of Mr. Otto and Mr. Grove pursuant to collective bargaining agreements entered into between various contributing employers and local Teamsters unions.

The plaintiffs initiated this action against the Pension Fund and its Board of Trustees (the "Trustees"), alleging that the Trustees incorrectly calculated their monthly pension benefits contrary to the plain language of the Pension Fund's Pension Plan. Since the plaintiffs' claims for benefits arise pursuant to an employee benefit plan, it comes under the auspices of the Employee Retirement Income Security Act of 1974 CERISA"), 29 U.S.C. § 1001, et seq., for which the Court has federal question jurisdiction.

Relevant facts, to which there is no dispute, are these: the Pension Fund, in existence since 1958, is a jointly trusteed pension fund governed by the terms of its Agreement And Declaration Of Trust ("Trust Agreement") and its Pension Plan. The Pension Plan is administered by ten Trustees, five of whom are appointed by contributing employers, and five of whom are appointed by the local Teamsters unions. The Trustees administer the Pension Plan for the purpose of

providing retirement benefits for eligible participants pursuant to a schedule of benefits determined from the level of employer contributions agreed upon through collective bargaining negotiations between the contributing employers and local Teamsters unions. The terms and conditions of the Trust Agreement and Pension Plan are summarized in the Pension Fund's Summary Plan Description ("SPD"), which is distributed to Pension Fund participants.

At issue are the Trustees' calculation of pension benefits for Mr. Otto and Mr. Grove. The parties agree that Section 4.4(a) of the Pension Plan governs how the amount of pension benefits are determined. In pertinent part, Section 4.4(a) of the Pension Plan provides:

> The monthly amount of Normal Pension granted a retiring Participant eligible for such benefit..., shall equal the product of (1) the Unit Multiplier determined in accordance with Appendix A herein, and (2) the Credited Service period of such Participant, both factors to be determined as of the Participant's Termination date...

The term "Unit Multiplier", and the rules for calculating unit multipliers applicable to the calculation of pension benefits are provided in Appendix A to the Pension Plan. The unit multipliers are calculated by the Pension Fund Actuary and are based on the weekly contribution rate paid by a contributing employer to the Pension Fund for a participant.

With respect to Mr. Otto, the parties agree that he retired at age 65; that he earned 14 years of credited service with the Pension Fund and 12 years of credited service with the Central Pennsylvania Fund ("CPF"); and that he was eligible for "reciprocal normal retirement" benefits from the Pension

Fund and the CPF. "Reciprocal normal retirement" benefits are calculated by combining one's service earned with the Pension Fund and with any Reciprocal Pension Funds (such as the CPF), with the Pension Fund paying its percentage of the total pension benefit. Effective September 1, 1999, Mr. Otto's monthly reciprocal normal retirement benefit from the Pension Fund (with the Qualified Joint and 100% Survivor Benefit) was $936.60, calculated as follows:

Fund	Periods of Service	Credited Service	Unit Multiplier	Monthly Benefit
Pension	10/01/70-3/31/82	11 years	x $30.00	$330.00
	4/01/82-3/31/85	3 years	x $35.00	$105.00
CPF	1/01/88- 3/03/88	3 months	x $60.00	$15.00
	4/01/88-3/31/89	1 year	x $75.00	$75.00
	4/01/89-3/31/90	1 year	x $78.00	$78.00
	4/01/90-3/31/91	1 year	x $81.00	$81.00
	4/01/91-3/31/92	1 year	x $96.00	$96.00
	4/01/92-3/31/93	1 year	x $101.00	$101.00
	4/01/93-3/31/94	1 year	x $111.30	$111.30
	4/01/94-3/31/95	1 year	x $123.30	$123.30
	4/01/95-3/31/96	1 year	x $150.30	$150.30
	4/01/96-3/31/97	1 year	x $174.30	$174.30
	4/01/97-3/31/99	2 years	x $202.50	$405.00
	4/01/99-12/31/99	9 months	x $214.50	$160.88
		26 years		$2,006.78

Reciprocal Calculation

Pension Fund	14 years = 53.85%	x 53.85%
CPF	12 years = 46.15%	$1,080.65

Qualified Joint And 100% Survivor Benefit	x .8667
	$936.60
	(Survivor- $936.60)

The Pension Fund calculated Mr. Otto's monthly reciprocal normal retirement benefit pursuant to Section 4.4(a) of the Pension Plan by determining his combined credited service at his termination date; it then determined the unit multiplier at his termination date by applying the provisions of Appendix A. In doing so, the Pension Fund applied various unit multipliers in the calculation which corresponded to varying weekly employer contribution rates made on Mr. Otto's behalf to the Pension Fund and the CPF.

The plaintiffs believe the Trustees erred in applying various unit multipliers to calculate their monthly benefit. Instead, the plaintiffs insist that based on Section 4.4(a) of the Pension Plan, and as summarized in the SPD, Mr. Otto's monthly reciprocal normal retirement benefit should be calculated solely on the unit multiplier corresponding to his employer's last contribution schedule on the date of his last

covered employment (i.e., $214.50).[1] Based on the calculation method urged by the plaintiffs, Mr. Otto would receive a monthly reciprocal normal retirement benefit from the Pension Fund (with the Qualified Joint and 100% Survivor Benefit) in the amount of $2,602.88 retroactive to September 1, 1999, as follows:

Fund	Periods of Service	Credited Service	Unit Multiplier	Monthly Benefit
Pension	10/01/70-3/31/85	14 years	x $214.50	$3003
CPF	1/01/88-12/31/99	12 years	x $214.50	$2,574
		26 years		$5,577

Reciprocal Calculation		
Pension Fund	14 years = 53.85%	x 53.85%
CPF	12 years = 46.15%	$3003.21
Qualified Joint And 100% Survivor Benefit		x .8667
		$2,602.88
		(Survivor- $2,602.88)

[1] In pertinent part, the Pension Fund's 1999 SPD advises participants that they can compute their monthly normal retirement benefit as follows: "1. Estimate the number of years of Credited Service you will have earned at the time of your Normal Retirement Date... 2. Determine your Employer's last weekly contribution rate. The weekly contribution rate paid by your Employer determines the amount of the Unit Multiplier utilized to calculate your benefit... 3. Find your Unit Multiplier for Normal Retirement Benefits by referring to Tables 1 through 6... 4. Multiply your Unit Multiplier, as determined in Step 3, by your Credited Service. This is your estimated monthly benefit which will be paid to you each month for the rest of your life"... Ex. S-3 at p. 23.

With respect to Fred P. Grove, the record shows that he initially terminated covered employment in May 1995 at age 62; that he applied for benefits commencing July 1, 1995, at which time the Pension Fund offered him normal retirement benefits which did not include any credit for reciprocal service while he was employed with CPF; that Mr. Grove was unwilling to accept a pension which did not include credit for reciprocal service while he was employed and covered with CPF; and that due to a lack of funds, Mr. Grove returned to covered employment in December 1999 and obtained additional credited service with the Pension Fund while working for an employer who made weekly contributions at a much lower rate than that of the employer for whom Mr. Grove was employed at the date of his termination in May 1995. Mr. Grove permanently retired at age 68, having earned 9 years, 5 months of credited service with the Pension Fund and 10 years of credited service with the CPF, for which he was eligible for reciprocal normal retirement benefits. The parties agree that Mr. Grove should not have his benefits reduced for having returned to work from December 1999 through May 2001. Thus, effective June 1, 2001, Mr. Grove's monthly reciprocal normal retirement benefit from the Pension Fund (with the Qualified Joint and 100% Survivor Benefit) was $471.45, calculated as follows:

Fund	Periods of Service	Credited Service	Unit Multiplier	Monthly Benefit
Pension	12/01/71-12/31/79	7yrs, 11 mos	x $30.00	$237.50
CPF	01/01/85-12/31/86	2 yrs	x $35.00	$70.00
	01/01/87-03/31/87	3 mos	x $50.00	$12.50
	04/01/87-03/31/88	1 yr	x $60.00	$60.00

04/01/88-03/31/91	3 yrs	x $85.80	$257.40
04/01/91-03/31/92	1 yr	x $100.80	$100.80
04/01/92-03/31/93	1 yr	x $106.50	$106.50
04/01/94-03/31/94	1 yr	x $116.10	$116.10
04/01/94-12/31/94	9 mos	x $128.10	$ 96.08
12/01/99-5/31/01	1yr, 6 mos	x $31.50	$ 47.25
	19 yrs, 5 mos		$1,104.13

Reciprocal Calculation

Pension	9 yrs, 5 mos	= 48.50%	
CPF	10 yrs	= 51.50%	x 48.50%
			$ 535.50

Qualified Joint And 100% Survivor Benefit x .8804

$471.45

(Survivor- $471.45)

The Pension Fund calculated Mr. Grove's monthly reciprocal normal retirement benefit pursuant to Section 4.4(a) of the Pension Plan by determining his combined credited service at his termination date; it then determined the unit multiplier at his termination date by applying the provisions of Appendix A. Again, the Pension Fund applied various unit multipliers in the calculation which corresponded to varying weekly contribution rates made on Mr. Grove's behalf to the Pension Fund and the CPF.

It is the plaintiffs' position that based on Section 4.4(a) of the Pension Fund, and as summarized in the SPD, Mr. Grove's monthly reciprocal normal retirement benefit should be calculated solely on the unit multiplier which corresponded to his employer's last contribution schedule on the date of his last covered employment prior to returning to work in

December 1999 (i.e., $128.10). Based on the calculation method urged by the plaintiffs, Mr. Grove would receive a monthly reciprocal normal retirement benefit from the Pension Fund (with the Qualified Joint and 100% Survivor Benefit) in the amount of $1,062.05 retroactive to June 1, 2001, as follows:

Fund	Periods of Service	Credited Service	Unit Multiplier	Monthly Benefit
Pension	12/01/71-12/31/79	7 yrs, 11 mos	x $128.10	$1,014.12
CPF	1/01/85-12/31/94	10 yrs	x $128.10	$1,281.00
Pension	12/01/99-5/31/01	1 yr 6 mos	x $128.10	$ 192.15
		19 yrs, 5mos		$2,487.27

Reciprocal Calculation

Pension	9 yrs, 5 mos	= 48.50%	x 48.50%
CPF	10 yrs	= 51.50%	$1,206.33

Qualified Joint And 100% Survivor Benefit x .8804

$1,062.05

(Survivor- $1,062.05)

When a Pension Fund participant disputes a decision by the Trustees, as here, the trust Agreement provides that a participant may appeal the decision to the Trustees. Mr. Otto, in letters dated May 31, 2002 and September 4, 2002, and Mr. Grove, by letter dated July 5, 2002, appealed the

calculation of their benefits to the Trustees. On September 4, 2002, Mr. Otto and Mr. Grove had hearings on their appeals before a Trustee Sub-Committee which subsequently submitted a Report and Recommendations on October 9, 2002 to the Trustees. At their meeting on October 9, 2002, the Trustees adopted the recommendation of the Trustee Sub-Committee to deny the plaintiffs' appeals.

In letters dated November 19, 2002, counsel for the Pension Fund advised Mr. Otto and Mr. Grove of the denial of their appeals. In letters dated December 5, 2002, counsel for Mr. Otto and Mr. Grove requested the Pension Fund to provide them with specific references to the pertinent plan provisions upon which the denial of their appeals were based in accordance with the 1999 SPD and 29 CFR § 2560.503-1(j)(2) (formerly 29 CFR § 2560.503-1(h)(3)).[2]

In a Report and Recommendations dated January 8, 2003, The Trustee Sub-Committee recommended that the Trustees direct the Pension Fund's counsel to provide the information requested by plaintiffs' counsel in his December 5, 2002 letters. At their meeting on January 8, 2003, the Trustees adopted the recommendation of the Trustee Sub-Committee. Thus, in letters dated June 13, 2003, counsel for the Pension Fund responded to the December 5, 2002 letters from plaintiffs' counsel, explaining that Mr. Otto and Mr. Grove were subjected to the "Freight Level unit multiplier" as

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[2] In relevant part, 29 CFR § 2560.503-1(J)(2) provides: "The plan administrator shall provide a claimant with written or electronic notification of a plan's benefit determination on review... In the case of an adverse benefit determination, the notification shall set forth, in a manner calculated to be understood by the claimant -- Reference to the specific plan provisions on which the benefit determination is based."

detailed in Appendix A to the Pension Plan and as summarized at Tables 2 and 3 of the SPD (at pp. 67-68).[3]

Having exhausted the Trust Agreement's appeal procedure, the plaintiffs commenced this action on June 27, 2003, seeking a judgment which requires the Trustees to recalculate the pension benefits of Mr. Otto and Mr. Grove as proposed above, and to pay them accordingly, plus interest on withheld pension payments, attorney's fees and costs, and to permit Mrs. Otto and Mrs. Grove to make elections for survivors' benefits as are available to them.

To resolve the issue of whether the Trustees calculated pension benefits for Mr.Otto and Mr. Grove in accordance with Plan documents, the parties submitted cross-motions for summary judgment. Summary judgment is appropriate if no genuine issues of material fact are in dispute, and the movants are entitled to judgment as a matter of law. F.R.Civ.P. 56(c); *Bailey v. United Airlines,* 279 F.3d 194, 198 (3d Cir. 2002).

ERISA applies to and covers "any employee benefit plan" established or maintained by any employer engaged in commerce. 29 U.S.C. § 1003(a)(1). The plaintiffs' claims for benefits are premised on § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B).[4]

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[3] Ex. S-16 and Ex. S-17.

[4] Section 502(a)(1)(B) of ERISA provides:

> A civil action may be brought--
> (1) by a participant or beneficiary–
> ...
> (B) to recover benefits due to him under the terms of [the] plan, to enforce his rights under the terms of the plan, or

In *Firestone Tire & Rubber Co. v. Bruch,* 489 U.S. I01 (1989), the Supreme Court established the proper standard of review for challenged denials of claims under § 1 !32(a)(1)(B) of ERISA. The Court in *Bruch* held that:

> a denial of benefits challenged under § 1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility to benefits or to construe the terms of the plan.

489 U.S. at 115. Where a Plan gives its administrator or fiduciary such discretionary authority, a deferential standard of review is applied to a denial of benefits, Id. at pp. 11 I-115, and it is reviewed under an "arbitrary and capricious standard". *Orvosh v. Program of Group Insurance for Salaried Employees of Volkswagen of America,* 222 F.3d 123, 129 (3d Cir. 2000).

To determine the proper standard of review then, we must look to the terms of the Pension Plan and its governing documents to determine if they granted the Trustees discretion to interpret Plan terms or to decide one's right to benefits. See, *Luby v. Teamsters Health Welfare and Pension Trust Funds*, 944 F.2d 1176, 1180 (3d Cir. 1991). If the relevant Plan documents granted such discretionary authority to the Trustees, we will apply an arbitrary or capricious standard of review to their calculation of the plaintiffs' benefits, as it does

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to clarify his rights to future benefits under the terms of the plan. 29 U.S.C. § 1132(a)(1)(B).

not appear they had an economic conflict of interest in determining such benefits.[5]

> In Section 4.3 of the Trust Agreement, it is provided in relevant part:
>
> The Trustees shall have the power and authority, in their sole discretion, to use and apply the Pension Fund to pay or provide for the payment of retirement and related benefits to eligible Participants and Beneficiaries in accordance with the terms, provisions and conditions of the Pension Plan to be established and agreed upon hereunder by the Trustees...

Section 4.16 of the Trust Agreement also provides: "the Trustees shall have full and exclusive authority to determine all questions or controversies of whatsoever character arising.., between any parties or persons in connection with the Pension Fund... [including] as to any claim of coverage and eligibility [and] methods of providing or arranging for

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[5] In *Pinto v. Reliance Standard Life Insurance Co.*, 214 F.3d 377 (3d Cir. 2000), our Court of Appeals held that "a higher standard of review is required when reviewing benefits denials of insurance companies [or other fiduciaries] paying ERISA benefits out of their own funds." *Id.* at 387-390. As explained in *Pinto*, "insurance carriers [or other such fiduciaries paying benefits out of their own funds] have an active incentive to deny close claims in order to keep costs down". *Id.* at 388. Here, however, the Trustees do not appear to have such an economic conflict of interest (and the plaintiffs do not argue otherwise), for while they administer and supervise the operation of the Pension Plan (Sections 3.6 and 4.1 of Trust Agreement), benefits appear to be paid from funds held in a trust established under the Plan (Section 1.15 of Trust Agreement).

benefits". Since the Trustees have discretion to calculate the plaintiffs' monthly retirement benefits and provide payment for such benefits, we will review their interpretation of the Pension Plan under an arbitrary and capricious standard. *Orvosh, supra*, 222 F.3d at 129.

Under this standard of review, the Third Circuit Court of Appeals has instructed:

> [A]n administrator's decision will only be overturned if it is without reason, unsupported by substantial evidence or erroneous as a matter of law.., the court is not free to substitute its own judgment for that of the defendants in determining eligibility for plan benefits.

Pinto supra, 214 F.3d at 387. In *Pinto*, the Court explained: "It is important to recognize that ERISA does not make the judges the decisionmakers. It merely assures that the appropriate procedure is followed." *Id.*

Normal retirement benefits (both reciprocal and non-reciprocal) are calculated pursuant to Section 4.4(a) of the Pension Plan, which provides in relevant part:

> The monthly amount of Normal Pension granted a retiring Participant eligible for such benefit.., shall equal the product of (1) the Unit Multiplier determined in accordance with Appendix A herein, and (2) the Credited Service period of such Participant, both factors to be determined as of the Participant's Termination Date...

In calculating the plaintiffs' monthly benefits, the record shows that the Trustees interpreted and utilized the provisions of Section 4.4(a) of the Pension Plan in a reasonable manner.

For instance, as set forth in the affidavit of Gerri Talerico, the Pension Fund's Office Manager, the first step in calculating a reciprocal or non-reciprocal normal retirement benefit is to determine a participant's "credited service" as of his termination date (i.e., the last date contributions were made to the Pension Fund or to a Reciprocal Pension Fund) as required by Section 4.4(a)(2).[6] The plaintiffs do not dispute that the Trustees properly calculated the "credited service" of Mr. Otto and Mr. Grove as of their termination dates.

The second step utilized by the Pension Fund Office in calculating a reciprocal or non-reciprocal normal retirement benefit is to determine the "unit multiplier" as of a participant's termination date in accordance with Appendix A of the Plan as required by Section 4.4(a)(1); Appendix A provides the rules for calculating the applicable unit multiplier(s) of pension benefits[7] Pension Fund Office Manager Gerri Talerico avers:

> The rules provide that a unit multiplier is based on the weekly contribution rate paid by a contributing employer to the Pension Fund for a participant, and that a pension benefit, such as those calculated for Mr. Otto and Mr. Grove, are based on a number of unit

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[6] See, first affidavit of Gerri Talerico (Docket No. 20) at ¶ 7.

[7] Id. at ¶ 8.

multipliers based on the changing weekly contribution rates for a participant.[8]

The record shows that at the request of the Pension Fund Office, the Pension Fund Actuary reviewed the benefit applications of Mr. Otto and Mr. Grove and determined that all contributions made for Mr. Otto, and all contributions made for Mr. Grove (except for the period of December 1, 1999 through May 31, 2001) were made pursuant to the National Master Freight (the "Freight Level") contribution rate schedule.[9] The Freight Level contribution schedule is based on results of national negotiations between the Teamsters union and certain employers, under which weekly contribution rates have increased from $2.00 per week in 1958 to $202.00 per week in 2003.[10]

In calculating the reciprocal normal retirement benefits of Mr. Otto and Mr.Grove, the Pension Fund Actuary utilized the Freight Level unit multipliers in accordance with Appendix A of the Plan, as summarized in the 1999 SPD at Table 3 (p. 68).[11] Table 3 of the 1999 SPD provides in relevant part:

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[8] Id.

[9] Id. at ¶ 8.1. Also see the affidavit of Randee W. Sekol, Chief Executive Officer and Chief Actuary of Beyer-Barber Company, the Actuary for the Pension Fund since 1982 (Docket No. 21) at ¶ 9.

[10] See, affidavit of Randee W. Sekol at ¶ 8.

[11] Id. at ¶¶ 8-10.

UNIT MULTIPLIERS FOR NATIONAL MASTER FREIGHT CONTRIBUTION RATES

Contribution Rate Effective Dates	Weekly Employer Contribution Rates	Normal, Early, 30-And-Out and Vested Benefits Unit Multipliers
Prior to 4/01/82	Rate Varied	$ 30.00
4/01/82	58.00	$ 35.00
4/01/83	62.00	$ 35.00
4/01/84	64.00	$ 35.00
1/01/87	68.00	$ 50.00
4/01/87	72.00	$ 60.00
4/01/88	82.00	$ 75.00
4/01/89	84.00	$ 78.00
4/01/90	88.00	$ 81.00
4/01/91	92.00	$ 87.00
4/01/92	98.00	$ 96.00
4/01/93	106.00	$108.00
11/01/93	106.00	$ 96.00
4/01/94	118.00	$114.00
12/01/94	118.00	$ 99.00
4/01/95	132.00	$120.00
4/01/96	150.00	$147.00
4/01/97	166.00	$171.00
4/01/99	168.00	$174.00

Significantly, in advising participants how to estimate the computation of their monthly normal retirement benefit, the 1999 SPD (at pp. 22-23) provides the following example:

> Assume that your Employer contributed at the National Master Freight Level contribution rate schedule on your behalf, and you estimate that you

> will have earned 20 continuous Years of Credited Service when you retire at age 60 on January 1, 1999. Multiplying 20 Years of Credited Service by the Unit Multipliers (for the stated time periods) stated on Table 3, results in the monthly lifetime benefit of $1,531.50.

This example in the SPD undercuts the plaintiffs' argument that the Trustees erred in applying various unit multipliers to calculate their monthly benefits instead of applying the last unit multiplier in effect at their termination dates. Section 4.4(a) of the Plan expressly provides that the unit multiplier is "determined in accordance with Appendix A" as of the "Participant's Termination Date" and in calculating the benefits for Mr. Otto and Mr. Grove, the Pension Fund Actuary utilized the Freight Level unit multipliers in accordance with Appendix A, as summarized in the 1999 SPD at Table 3.

As discussed above, our review of the Trustees' calculation of monthly benefits for Mr. Otto and Mr. Grove is limited to an arbitrary and capricious standard. In *Pinto*, *supra*, the Third Circuit Court of Appeals explained the deference that must be afforded under this standard: "[A]n administrator's decision will only be overturned if it is without reason, unsupported by substantial evidence or erroneous as a matter of law." 214 F.3d at 387.

As gleaned from the record, the Trustees' calculation of monthly benefits for the plaintiffs was based on a reasonable interpretation of Section 4.4(a) of the Plan and is supported by substantial evidence. In making their calculations, the Trustees determined both the credited service periods of Mr. Otto and Mr. Grove, as well as their unit multipliers in accordance with Appendix A as of their termination dates.

The Trustees have consistently interpreted the provisions of Section 4.4(a) in such a manner and as recited above since at least June 24, 1991.[12] Based on the foregoing, the Trustees' method of calculating the plaintiffs' monthly benefits is supported by evidence and not clearly erroneous; thus, the calculation of benefits for Mr. Otto and Mr. Grove should not be overturned under an arbitrary and capricious standard of review.

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[12]See, first affidavit of Gerri Talerico at ¶¶ 9-10. The plaintiffs argue that the defendants utilized Plan documents in an inconsistent manner upon calculating their pension benefits, pointing to the case of *Bencivenga v. Western Pennsylvania Teamsters And Employers Pension Fund*, 763 F.2d 574, 575 (3d Cir. 1985), where pension benefits were paid to Columbo Bencivenga by multiplying the last unit multiplier then in effect (i.e., $22) by his credited service. As explained by Pension Fund Office Manager Gerri Talerico, however, the calculation of benefits for Mr. Bencivenga was made in accordance with Plan documents as follows: "Mr. Bencivenga was employed by Morris Paper through his Termination Date on March 5, 1979, and during the last years of his employment, the Company paid weekly contributions of $25.00 (effective October 1, 1976), $28.90 (effective October 1, 1977), and $31.00 (effective October 1, 1978). Pursuant to Schedule A of Appendix A to the Pension Plan [at p. 96], the historical unit multiplier schedule ... provided that the unit multiplier for all of Mr. Bencivenga's credited service through March 5, 1979 was $22.00." See, second affidavit of Gerri Talerico (Docket No. 24) at ¶ 4. Gerri Talerico also avers: "it is not unusual for a single unit multiplier to be applicable for a number of years of contributions made on a particular participant's behalf. For example, the single Freight Level unit multiple of $30.00 was applicable to all of Mr. Otto's service prior to March 31, 1982 (11 years) and to all of Mr. Grove's service prior to December 31, 1979 (7 years, 11 months). Thereafter, pursuant to Appendix A, the Freight Level unit multiplier increased from $30.00, at various intervals, based on the increased contributions by the Plaintiffs' employers". Id. at ¶ 5.

The plaintiffs also contend that Mr. Grove is entitled to receive benefits retroactive to the date of his initial application for benefits commencing July 1, 1995, as the Pension Fund improperly denied him reciprocal service credit at that time, such that he was forced to return to work from December 1999 through May 2001. The Trustee Sub-Committee addressed this argument in its Report and Recommendations of October 9, 2002, explaining:

> The Trustees, at the June, 1989 Annual Meeting, determined that the [Pension Fund] would not participate in the calculation of reciprocal pension benefits with the [CPF] for periods of service after December 31, 1986... In April, 2001, the parties [i.e., the Pension Fund and CPF] began to negotiate a Reciprocal Agreement, and the Reciprocal Agreement was executed November 13, 2001, effective for eligible participants who retired on and after July 1, 1999.[13]

Hence, the Trustee Sub-Committee recommended that "Mr. Grove's contentions concerning the Reciprocal Agreement [be] denied, because the Reciprocal Agreement was necessary in order for him to receive reciprocal credit for his service with the [CPF] Retirement Income Plans."[14] The Trustees adopted the recommendations of the Trustee Sub-Committee at their meeting on October 9, 2002. Based on an arbitrary and capricious standard of review, the Trustee's aforesaid decision appears to be reasonable and supported by the evidence.

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[13] Ex. S-8 at pp. 4-5 (with citations to the record omitted).

[14] Id. At p. 5.

In their cross-motions for summary judgment, the parties agree that no genuine issue of material fact is in dispute. For the reasons discussed above, the defendants are entitled to judgment as a matter of law.

An appropriate Order will be entered.

ORDER

AND NOW, this 20th day of April, 2004, for the reasons set forth in the Court's Opinion and order,

IT IS HEREBY ORDERED that the motion for summary judgment submitted by the plaintiffs (Docket No. 13) is denied, and that the motion for summary judgment filed by the defendants (Docket No. 18) is granted.

/s/ Robert C. Mitchell

ROBERT C. MITCHELL
United States Magistrate Judge

JUDGMENT ORDER

AND Now, this 20th day of April, 2004, for the reasons set forth in the Court's Opinion and Order entered this date, pursuant to Rule 58, F.R.Civ.P., judgment is hereby entered against the plaintiffs and in favor of the defendants.

The Clerk is directed to mark this case closed.

/s/ Robert C. Mitchell
Robert C. Mitchell
United States Magistrate Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 03-140J

James Otto, Shirley A. Otto, Fred P. Grove And Ethyl J. Grove, Plaintiffs,

v.

Western Pennsylvania Teamsters and Employers Pension Fund and the Board of Trustees of the Western Pennsylvania Teamsters and Employers Pension Fund, Defendants.

STIPULATION OF FACTS

By the signatures of their Counsel on this Stipulation Of Facts, the parties to this action stipulate and agree that the facts set forth in this document are undisputed and true, that

this stipulation may be offered to show such facts without the necessity of offering witnesses or documentary evidence, and that the exhibits attached hereto are true and correct copies.

A. Parties And Jurisdiction

1. Plaintiff, James Otto, is a natural person on whose behalf pension contributions were made to the Defendant, Western Pennsylvania Teamsters and Employers Pension Fund (hereinafter "Pension Fund"), pursuant to collective bargaining agreements entered into between various Contributing Employers and local Teamsters unions.

2. Plaintiff, Shirley A. Otto, is the spouse of James Otto, and is a beneficiary entitled to survivor benefits from the Pension Fund resulting from the participation of Mr. Otto with the Pension Fund.

3. Plaintiff, Fred P. Grove, is a natural person on whose behalf pension contributions were made to the Pension Fund pursuant to collective bargaining agreements entered into between various Contributing Employers and local Teamsters unions.

4. Plaintiff, Ethyl J. Grove, is the spouse of Fred P. Grove, and is a beneficiary entitled to survivor benefits from the Pension Fund resulting from the participation of Mr, Grove with the Pension Fund.

5. Defendant, Pension Fund, which has been in existence since September 1, 1958, is a jointly trusteed pension fund, and is governed by the terms of its Agreement And Declaration Of Trust (hereinafter "Trust Agreement"), attached hereto as Exhibit S-l, and its Pension Plan, attached hereto as Exhibit S-2. The Pension Fund is administered by

a Board of Trustees (hereinafter "Trustees") consisting of ten Trustees, five of whom are appointed by the Contributing Employers, and five of whom are appointed by the local Teamsters unions. (Ex. S-1, Section 3.4, at 13)

6. The Trustees administer the Pension Fund for the purpose of providing such retirement benefits as are authorized and permitted by law for eligible participants, pursuant to a schedule of benefits determined from the level of employer contributions agreed upon as the result of collective bargaining negotiations between the various Contributing Employers and member local Teamsters unions.

7. The terms and conditions of the Trust Agreement and the Pension Plan are summarized and distributed to the participants by the Pension Fund's Summary Plan Description Booklet (hereinafter "SPD"). Attached hereto as Exhibit S-3 is the 1999 version of the SPD (hereinafter "SPD 1999"), and attached hereto as Exhibit S-4 is the 1995 version of the SPD (hereinafter "SPD 1995").

8. The Trustees, as "fiduciaries" as defined at 29 U.S.C. §1104(a) (I), are required to discharge their duties with respect to the Pension Fund solely in the interest of the participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and their beneficiaries, in accordance with the documents and instruments governing the Pension Fund.

9. This action arises under the Employee Retirement Income Security Act of 1974, as amended. (29 U.S.C. §1001, et seq.)

10. Jurisdiction is conferred on this Court pursuant to 29 U.S.C. 51132.

B. Calculation Of Reciprocal Normal Retirement Pension Benefits

11. The calculation of pension benefits is made by the Pension Fund Office, pursuant to the provisions of the Pension Plan. Since the inception of the Pension Fund, the Pension Plan has been amended and restated on numerous occasions in order to comply with changes in federal pension legislation, and to be responsive to the needs of the participants and the financial security of their pension benefits.

12. "Normal Retirement" is retirement at age 60 or thereafter upon earning three years of participation on and after January 1, 1999. (Ex. S-2, Section 4.1(a), at page 19; Amendment No. 15 at 2) The provisions for the calculation of normal retirement benefits are stated at Section 4.4(a) of the Pension Plan, as follows:

> (a) Normal Retirement Pension Benefit. The monthly amount of Normal Pension granted a retiring Participant eligible for such benefit under the provisions of Section 4.2 herein, shall equal the product of (I) the Unit Multiplier determined in accordance with Appendix A herein, and (2) the Credited Service period of such Participant, both factors to be determined as of the Participant's Termination Date ....
> (Ex. S-2 at 23)

The language of Section 4.4(a) has been in effect, and has remained unchanged, since 1976.

13. "Unit Multiplier", and the rules for calculating the unit multipliers applicable to the calculation of pension benefits, are provided in Appendix A to the Pension Plan. (Ex. S-2, Appendix A, at 94-103) The rules provide that a unit multiplier is based upon the weekly contribution rate paid by a Contributing Employer to the Pension Fund for a participant. The unit multipliers are calculated by the Pension Fund Actuary.

14. A normal retirement benefit, pursuant to section 4.4(a) and Appendix A, is calculated by multiplying a participant's years of credited service by the appropriate unit multiplier. For example, assume that a participant earned ten years of credited service, and the unit multiplier (based on the Contributing Employer's weekly contribution rate) during the ten-year period was $20.00. Upon reaching eligibility for normal retirement benefits, the participant's monthly benefit would be calculated as follows:

Years Of	Unit		Monthly
Credited Service	Multiplier		Benefit
10 yrs x	$20.00	=	$200.00

In this example, the participant would receive the monthly benefit of $200.00 for the remainder of the participant's life.

15. The calculation of normal retirement benefits is summarized in the SPD (1999) (Ex. S-3 at 22-24), and in the SPD (1995) (Ex. S-4 at 16-17).

16. "Reciprocal Benefits" are provided for at Article VII of the Pension Plan, and are paid pursuant to Reciprocal Agreements entered into with various other Teamsters Pension Funds. (Ex. S-2 at 52-55) Pursuant to Article VII, reciprocal normal retirement benefits are calculated by

combining the service earned with the Pension Fund and any Reciprocal Pension Funds, with the Pension Fund paying its pension liability percentage of the total pension benefit. For example, assume that a participant earned ten years of credited service with a unit multiplier of $20.00 with the Pension Fund, and also earned ten years of credited service with a unit multiplier of $20.00 with a Reciprocal Pension Fund. Upon reaching eligibility for reciprocal normal retirement benefits, the percentage of the total combined monthly benefit paid by the Pension Fund would be calculated as follows:

Fund	Years Of Credited Service		Unit Multiplier	Monthly Benefit
Pension Fund	10 yrs	x	$20.00	= $200.00
Reciprocal Fund	10 yrs	x	$20.00	= $200.00
	20 yrs			$400.00

Reciprocal Calculation		
Pension Fund	10 yrs = 50%	x 50%
Reciprocal Fund	10 yrs = 50%	$200.00
	20 yrs 100%	

In this example, the Pension Fund would pay 50% of the combined pension liability, or $200.00, of the monthly pension benefit. The Reciprocal Pension Fund would pay its share of the monthly reciprocal benefit as calculated pursuant to the provisions of its own pension plan.

The Reciprocal Pension Fund's unit multipliers utilized by the Pension Fund to calculate reciprocal benefits are calculated by the Pension Fund Actuary pursuant to Appendix A.

17. The calculation of reciprocal pension benefits is summarized in the SPD (1999) (Ex. S-3 at 47-49), and in the SPD (1995) (Ex. S-3 at 31-32).

18. "Qualified Joint and 100% Survivor Benefit" is calculated by multiplying the monthly normal retirement benefit by the appropriate discount percentage determined by the Pension Fund Actuary. (Ex. S-2, Section 4.9(b) (2) (ii), at 36; SPD (1999) at 4344; SPD (1995) at 27-28) The discount percentage depends upon the ages of the participant and the spouse at the date of retirement. Pursuant to the Qualified Joint and 100% Survivor Benefit, upon the participant's death the surviving spouse receives 100% of the participant's monthly benefit for the remainder of the spouse's life.

C. Calculation Of James Otto's Monthly Reciprocal Normal Retirement Benefit

19. Mr. Otto retired, at age 65, from the Pension Fund effective September I, 1999, and receives the monthly reciprocal normal retirement benefit of $936.60, with the Qualified Joint and 100% Survivor Benefit. Mr. Otto will receive the monthly reciprocal normal retirement benefit of $936.60 for the remainder of his life, and upon his death, Mrs. Otto will receive the monthly reciprocal survivor benefit of $936.60 for the remainder of her life. Mr. Otto also receives a reciprocal benefit from the Central Pennsylvania Teamsters Pension Fund (hereinafter "Central Pennsylvania Fund").

20. Mr. Otto retired at age 65. The Pension Fund acknowledges that he was entitled to retirement benefits from the Pension Fund. He earned 14 years of credited service with the Pension Fund, 12 years of credited service with the

Central Pennsylvania Fund, and was eligible for reciprocal normal retirement benefits from the Pension Fund and the Central Pennsylvania Fund.

21. Mr. Otto's monthly reciprocal normal retirement benefit of $936.60 from the Pension Fund, effective September I, 1999, was calculated as follows:

Fund
Western PA

Periods of Service	Credited Service	Unit Multiplier		Monthly Benefit
10/01/70-3/31/82	11 yrs	x $30.00=	$	330.00
04/01/82-03/31/85	3 yrs	x $35.00=		105.00

Fund
Central PA

01/01/88-03/03/88	3 mos	x $60.00=	15.00
4/01/89-3/31/89	1 yr	x $75.00=	75.00
4/01/89-3/31/90	1 yr	x $78.00=	78.00
4/01/90-3/31/90	1 yr	x $81.00=	81.00
4/01/91-3/31/92	1 yr	x $96.00=	96.00
4/01/92-3/31/93	1 yr	x $101.70=	101.70
4/01/93-3/31/94	1 yr	x $111.30=	111.30
4/01/94-3/31/95	1 yr	x $123.30=	123.30
4/01/95-3/31/96	1 yr	x $150.30=	150.30
4/01/96-3/31/97	1 yr	x $174.30=	174.30
4/01/97-3/31/99	2 yrs	x $202.50=	405.00
4/01/99-12/31/99	9 mos	x $214.50=	160.88
	26 yrs		$2,006.78

Reciprocal Calculation
Western Pa 14 yrs = 53.85% x 53.85%

Central Pa	12 yrs =	46.15%	$1,080.65
	26 yrs	100%	

Qualified Joint And 100% Survivor Benefit	x .8667
	$ 936.60
	(Survivor -$ 936.60)

22. The Pension Fund calculated Mr. Otto's monthly reciprocal normal retirement benefit pursuant to Section 4.4(a) by determining his combined credited service at his termination date (last date of covered employment - December 31, 1999), and determining the unit multiplier at his termination date by applying the provisions of Appendix A. The Pension Fund applied various unit multipliers utilized in the calculation corresponding to varying weekly employer contribution rates made on his behalf to the Pension Fund and the Central Pennsylvania Fund. The unit multipliers attributed to credited service earned with the Central Pennsylvania Fund were calculated by the Pension Fund Actuary by applying the rules provided in Appendix A to the weekly contribution rates paid by the Contributing Employers for Mr. Otto to the Central Pennsylvania Fund.

23. Mr. Otto, based on the provisions of Section 4.4(a), and as summarized in the SPD (1999) (Ex S-3 at 22) at Steps 1 through 5, contends that his monthly reciprocal normal retirement benefit should be calculated based solely on the unit multiplier corresponding to his employer's last contribution schedule ($214.50) on the date of his last covered employment, calculated as follows:

Fund
Western PA

Periods of Service	Credited Service	Unit Multiplier	Monthly Benefit
10/01/70 - 03/31/85	14 yrs	x $214.50 =	$3,003.00
Fund			
Central PA			
01/01/88 - 12/31/99	12 yrs	x $214.50 =	$2,574.00
			$5,577.00

Reciprocal Calculation

Western Pa	14 yrs =	53.85%
Central Pa	12 yrs =	46.15%
	26 yrs	100%

Qualified Joint And 100% Survivor Benefit	x .8667
	$2,602.88
	(Survivor - $2,602.88)

24. Pursuant to the calculation method urged by Mr. Otto, he would receive the monthly reciprocal normal retirement benefit from the Pension Fund of $2,602.88, with the Qualified Joint and 100% Survivor Benefit, retroactive to September I, 1999, instead of the monthly reciprocal normal retirement benefit of $936.60, with the Qualified Joint and 100% Survivor Benefit, presently being paid by the Pension Fund.

D. Calculation Of Fred P. Grove's Monthly Reciprocal Normal Retirement Benefit

25. Mr. Grove initially terminated covered employment in May, 1995 at age 62. He applied for benefits Commencing July I, 1995. The Pension Fund offered normal retirement benefits to Mr. Grove which did not include any credit for

reciprocal service while he was employed and covered with the Central Pennsylvania Fund. Mr. Grove was unwilling to accept a pension which did not include credit for reciprocal service while he was employed and covered with the Central Pennsylvania Fund. Due to lack of funds, Mr. Grove returned to covered employment in December, 1999 and obtained additional credited service with the Pension Fund, but for an employer who made weekly contributions at a much lower rate than that of the employer for whom Mr. Grove was employed at the date of his termination in May, 1995.

The Pension Fund agrees that .Mr. Grove should not be prejudiced by having his benefits reduced for having returned to work from December, 1999 through May, 2001.

26. Mr. Grove retired, again at age 68, from the Pension Fund effective June I, 2001, and receives the monthly reciprocal normal retirement benefit of $471.45, with the Qualified Joint and 100% Survivor Benefit. Mr. Grove will receive the monthly reciprocal normal retirement benefit of $471.45 for the remainder of his life, and upon his death, Mrs. Grove will receive the monthly reciprocal survivor benefit of $471.45 for the remainder of her life. Mr. Grove also receives a reciprocal benefit from the Central Pennsylvania Fund.

27. Mr. Grove again retired at age 68 when the Pension Fund acknowledged that he was entitled to normal retirement benefits from the Pension Fund. He earned 9 years, 5 months of credited service with the Pension Fund, I0 years of credited service with the Central Pennsylvania Fund, and was eligible for reciprocal normal retirement benefits from the Pension Fund and the Central Pennsylvania Fund.

28. Mr. Grove's monthly reciprocal normal retirement benefit of $471.45 from the Pension Fund, effective June I, 2001, was calculated as follows:

Fund
Western Pa

Periods of Service	Credited Service	Unit Multiplier	Monthly Benefit
12/01/71 - 12/31/79	7 yrs, 11 mos	x $30.00 =	$237.50

Fund
Central Pa

Periods of Service	Credited Service	Unit Multiplier	Monthly Benefit
01/01/85 - 12/31/86	2 yrs	x $ 35.00 =	70.00
01/01/87 - 03/31/87	3 mos	x $ 50.00 =	12.50
04/01/87 - 03/31/88	1 yr	x $ 60.00 =	60.00
04/01/88 - 03/31/91	3 yrs	x $ 85.80 =	257.40
04/01/91 - 03/31/92	1 yr	x $100.80 =	100.80
04/01/92 - 03/31/93	1 yr	x $106.50 =	106.50
04/01/93 - 03/31/94	1 yr	x $116.10 =	116.10
04/01/94 - 12/31/94	9 mos	x $128.10 =	96.08

Fund
Western Pa

12/01/99 - 05/31/01	1 yr 6 mos	x $ 31.50 = $	47.25
	19 yrs 5 mos		$1,104.13

Reciprocal Calculation

Western Pa	9 yrs 5 mos	= 48.50%	x	48.50%
Central Pa	10 yrs	= 51.50%		$535.50
	19 yrs 5 mos	100%		

Qualified Joint And 100% Survivor Benefit	x .8804
	$ 471.45
	(Survivor -$ 471.45)

29. The Pension Fund calculated Mr. Grove's monthly reciprocal normal retirement benefit pursuant to Section 4.4(a) by determining his combined credited service at his termination date (last date of covered employment - May 31, 2001), and determining the unit multiplier at his termination date by applying the provisions of Appendix A. The Pension Fund applied various unit multipliers utilized in the calculation corresponding to varying weekly contribution rates made on his behalf to the Pension Fund and the Central Pennsylvania Fund. The unit multipliers attributed to credited service earned with the Central Pennsylvania Fund were calculated by the Pension Fund Actuary by applying the rules provided in Appendix A to the weekly contribution rates paid by the Contributing Employers for Mr. Grove to the Central Pennsylvania Fund.

30. Mr. Grove, based on the provisions of Section 4.4(a) and as summarized in the SPD (1999) (Ex. S-3 at 22) at Steps 1 through 5, contends that his monthly reciprocal normal retirement benefit should be calculated based solely on the unit multiplier corresponding to his employer's last contribution schedule ($128.10) on the date of his last covered employment prior to returning to work in December, 1999, calculated as follows:

Fund
Western PA

Periods of Service	Credited Service	Unit Multiplier	Monthly Benefit
12/01/71 - 12/31/79	7 yrs,11 mos	x $128.10	=$1,014.12

Fund Central PA			
01/01/85 - 12/31/94	10 yrs	x $128.10 =	$1,281.00
Fund Western PA			
12/01/99 - 05/31/01	1 yr 6 mos	x $128.10 =	$ 192.15
	19 yrs 5 mos		$2,487.27

Reciprocal Calculation			
Western Pa	9 yrs 5 mos	= 48.50%	x 48.50%
Central Pa	10 yrs	= 51.50%	$1,206.33
	19 yrs 5 mos	100%	

Qualified Joint And 100% Survivor Benefit	x .8804
	$1,062.05
	(Survivor - $1,062.05)

31. Pursuant to the calculation method urged by Mr. Grove, he would receive the monthly reciprocal normal retirement benefit from the Pension Fund of $1,062.05, with the Qualified Joint and 100% Survivor Benefit, retroactive to June I, 2001, instead of the monthly reciprocal normal retirement benefit of $471.45, with the Qualified Joint and 100% Survivor Benefit, presently being paid by the Pension Fund.

E. Appeals Of James Otto And Fred P. Grove From Decisions Of The Pension Fund Trustees

32. In the event that a participant disputes a decision by the Trustees, the Trust Agreement provides that a participant

may appeal the decision to the Trustees. (Ex. S-1, Section 6.3, at 37)

33. Mr. Otto, by letter dated May 31, 2002, and Mr. Grove, by letter dated July 5, 2002, attached hereto as Exhibits S-5 and S-6, appealed the calculation of their benefits in writing,, with each appeal including a report of Charles Monroe, A.S.A., F.C.A., a certified pension actuary, dated May 29, 2002.

34. Mr. Otto submitted a corrected/revised letter of appeal on September 4, 2002, attached hereto as Exhibit S-7.

35. Mr. Otto and Mr. Grove were afforded oral hearings on September 4, 2002 before a Trustee Sub-Committee concerning their appeals of the calculation of the monthly reciprocal normal retirement benefits. The Trustee Sub-Committee, following the oral hearings, submitted to the Trustees the Report And Recommendations, dated October 9, 2002, attached hereto as Exhibit S-8. The Trustees, at their meeting on October 9, 2002, considered the Report And Recommendations and adopted the recommendation of the Trustee Sub-Committee to deny the appeals. The Minutes of the Trustees' October 9, 2002 meeting are attached hereto as Exhibit S-9.

36. Mr. Otto was advised of the denial of his appeal by the Pension Fund Counsel's November 19, 2002 letter, attached hereto as Exhibit S-10, and Mr. Grove was advised of the denial of his appeal by the Pension Fund Counsel's November 19, 2002 letter, attached hereto as Exhibit S-II.

37. By letters, dated December 5, 2002, attached hereto as Exhibit S-12 and S-13, Counsel for Mr. Otto and Mr; Grove wrote to the Pension Fund asking that they be provided

with the ". . . specific reference to the pertinent plan provisions upon which the denial is based", pursuant to former 29 CFR §2560.503-I(h) (3), now 29 CFR §256C.503-I(j) (2).

38. The Trustee Sub-Committee, by Report And Recommendations, dated January 8, 2003, attached hereto as Exhibit S-14, recommended that the Trustees direct the Pension Fund Counsel to provide the additional information requested in the December 5, 2002 letters from Counsel for Mr. Otto and Mr. Grove.

39. The Trustees, at their meeting on January 8, 2003, considered the Report And Recommendations and adopted the recommendation of the Trustee Sub-Committee. The Minutes of the Trustees' January 8, 2003 meeting are attached hereto as Exhibit S-15.

40. By letters, dated June 13, 2003, attached hereto as Exhibits S-16 and S-17, the Pension Fund Counsel responded to the December 5, 2002 letters from Counsel for Mr. Otto and Mr. Grove.

We, the parties to this action, so stipulate.

/s/ Konrad Kuczak
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Counsel for DEFENDANTS

EXHIBITS TO STIPULATION OF FACTS

Exhibit

S-1 Western Pennsylvania Teamsters And Employers Pension Fund Amended And Restated Agreement And Declaration Of Trust As Of June 1, 1999

S-2 Western Pennsylvania Teamsters And Employers Pension Fund Amended And Restated Pension Plan As Of September 1, 1992

S-3 Western Pennsylvania Teamsters And Employers Pension Fund Summary Plan Description Booklet (1999)

S-4 Western Pennsylvania Teamsters And Employers Pension Fund Summary Plan Description Booklet (1995)

S-5 May 31, 2002 letter from Konrad Kuczak, Esq. to Charles J. Streiff, Esq., et al., with May 29, 2002 letter of Charles Monroe, A.S.A., F.C.A., attached thereto.

S-6 July 5, 2002 letter from Konrad Kuczak, Esq. to Charles J. Streiff, Esq., et al., with May 29, 2002 letter to Charles Monroe, A.S,A., F.C.A. attached thereto.

S-7 September 4, 2002 letter from Konrad Kuczak, Esq. to Charles J. Streiff, Esq.

S-8 Report And Recommendations Of Trustee Sub-Committee Concerning Appeals Of Benefit Applications, dated October 9, 2002.

S-9 Minutes of Trustees' October 9, 2002 meeting.

S-10 November 19, 2002 letter from Charles J. Streiff, Esq. to Konrad Kuczak, Esq.

S-11 November 19, 2002 letter from Charles J. Streiff, Esq. to Konrad Kuczak, Esq.

S-12 December 5, 2002 letter from Konrad Kuczak, Esq. to Charles J. Streiff, Esq.

S-13 December 5, 2002 letter from Konrad Kuczak, Esq. to Charles J. Streiff, Esq.

S-14 Report And Recommendations Of Trustee Sub-Committee Concerning Appeals Of Benefit Applications, dated January 8, 2003.

S-15 Minutes of Trustees' January 8, 2003 meeting.

S-16 June 13, 2003 letter from Charles J. Streiff, Esq. to Konrad Kuczak, Esq.

S-17 June 13, 2003 letter from Charles J. Streiff, Esq. to Konrad Kuczak, Esq.

APPENDIX F

Date" as used herein shall mean the date on which a Participant completes a Break in Service.

(d) Break In Service. The term "Break In Service" as used herein shall mean the greater of (I) five (5) consecutive One Year Interruptions of Service, or (2) five (5) consecutive one Year Interruptions of Service and additional consecutive One Year Interruptions of Service which in the aggregate equal or exceed the number of Years of Participation since a Participant's last Break In Service. If a Participant incurs a Break In Service before he has completed ten (I0) Years of Participation, all Years of Participation and Credited Service prior to such Break In Service Date shall be forfeited.

(e) Termination Date The term "Termination Date" as used herein shall mean the date on which a Participant terminates his service in Covered Employment for any reason other than by death, disability or retirement. For purposes of determining the Termination Date, a Participant's Termination Date shall be deemed to be the last day of the period for which an Employer was required to make contributions on the Participant's behalf immediately preceding a One Year Interruption of Service.

Section 3.2. Eligibility.

(a) A Participant, who is an Employee as defined in Section 2.10(a) herein, will have a nonforfeitable right to a pension benefit, as provided in Article IV herein and subject to the conditions required therein, if such Participant has

completed ten (10)Years of Participation since such Participant's last Break In Service Date.

APPENDIX G

used herein shall have the meaning stated in Section 3.1(d) herein and shall apply to the determination of Credited Service.

Section 4.2. Conditions For Normal Retirement Pension Benefit. Any Participant who attains his Normal Retirement Age, as defined in Section 4.1(a) herein, may retire and shall be entitled to receive a pension under this Pension Plan.

Section 4.3. Conditions For Early Retirement Pension Benefit. Any Participant who has at least fifteen (15) Years of Credited Service, of which at least five (5) years are of Future Credited Service, may retire early upon the attainment of age fifty-five (55) and shall be entitled to receive a pension under this Pension Plan.

Section 4.4. Amount Of Pension.

(a) Normal Retirement Pension Benefit. The monthly amount of Normal Pension granted a retiring Participant eligible for such benefit under the provisions of Section 4.2 herein, shall equal the product of El) the Unit Multiplier determined in accordance with Appendix A herein, and (2) the Credited Service period of such Participant, both factors to be determined as of the Participant's Termination Date; provided, however, that such Credited Service shall include Future Credited Service resulting from Employer Contributions required to be paid by an Employer for such Participant after the Participant's First Pension Payment Date.

(b) Early Retirement Pension Benefit. The monthly amount of Early Pension granted a retiring Participant eligible

APPENDIX H

Example - "Rule of Parity"

Year	If you worked	You will have Earned Credited Service	Years of Participation
1976	6 mos.	6 mos.	1 Yr.
1977	12 mos.	12 mos.	1 Yr.
1978	7 mos.	7 mos.	1 Yr.
1979	4 mos.	4 mos.	0
1980	3 mos.	4 mos.	0
1981	0 mos.	0	0
1982	0 mos.	0	0
1983	0 mos.	0	0
Total:		2 Yrs. 8 mos	3 Yrs.

Termination Date: End of month in 1980 when last contribution was paid.

Break-in-Service: Since you earned 3 Years of Participation prior to January 1, 1985 you will incur a Break-in-Service at the end of 1983 because 32 consecutive years followed in which not one contribution was paid into the Plan on your behalf.

For a Participant who incurred a permanent Break-in-Service under the Plan's rules in effect prior to January 1, 1976, the effective provisions of the Plan for determining both service earned prior to that date ant the calculation of the

Participant's benefit, are those rules in effect on the Participant's Termination Date prior to January 1, 1976.

Termination Date

Your Termination Date is the last day a contribution was required to be made by your Employer on your behalf to the Plan.

Remember- You must be aware of your participation and termination dates in the Plan. Your participation and termination dates determine the effective provisions of the Plan for determining your service earned with the Plan and the calculation of your benefit.

If you were an active Participant in the Plan on January 1, 1976 and did not incur a permanent Break-in-Service under the Plan's rules in effect prior to January 1, 1976, the effective provisions of the Plan will be those in effect on your Termination Date after January 1, 1976.

If you were not an active Participant in the Plan on January 1, 1976 (the effective date of ERISA for the Plan), the effective provisions of the Plan for determining service earned prior to that date and the calculation of your benefit will be those in effect on your Termination Date prior to January 1, 1976; if you then become active int the Plan thereafter, and earned service after January 1, 1976 and did not incur a permanent Break-in-Service under the Plan's rules in effect prior to January 1, 1976, the effective provisions of the Plan for determining that portion o f your service will be those in effect on your Termination Date after January 1, 1976.

RETIREMENT BENEFITS PROVIDED BY THE PENSION PLAN

The Plan provides for the payment of Normal Retirement Benefits to you if you retire after reaching age 60 and you meet all of the eligibility requirements.

Definition of Normal Retirement Age

Normal Retirement Date is the later date of (1) the attainment of age 60, and (2) the completion of 10 Years of Participation in the Plan since your last Break-in-Service Date; or if you are not covered under a collective bargaining agreement not earlier than the completion of 5 Years of Participation since your last Break-in-Service date; or if you earned service on or after January 1, 1997, the completion of 5 Years of Participation since your last Break-in-Service date; or if you earned service on or after January 1, 1999, the completion of 3 Years of Participation since your last Break-in-Service date.

Eligibility

You are eligible for the receipt of the Normal Retirement Benefit when you reach your Normal Retirement Age.

Once you reach Normal Retirement Age, you are entitled to retire and receive your benefits. You are not required to retire; however, benefit payments will not begin until you retire. Please note that you are not permitted to receive pension benefits if you are employed in "Suspendible Employment" as explained at page 59.

Computation Of Benefit

You can estimate the amount of Normal Retirement Benefit you will receive each month after you retire by following these steps:

1. Estimate the number of Years of Credited Service you will have earned at the time of your Normal Retirement Date. You can find out the amount of Credited Service you have earned by making a written request to the Fund Office.

2. Determine you Employer's last weekly contribution rate. The weekly contribution rate paid by your Employer determines the amount of the Unit Multiplier utilized to calculate your benefit. Turn to Tables 1 through 6 and look for your Employer's last Contribution Rate Schedule. IF your Contribution Rate Schedule is not listed on the Tables, the Fund Office will provide you with your Contribution Rate Schedule upon written request.

   It is important to determine whether you retired under a contract negotiated before or after October 1, 1979. The date of October 1, 1979 is critical because on that date the Trustees adopted an amendment to the Plan which changed the rules for Unit Multipliers for future Credited Service in order to eliminate deficits in all Contribution Rate Schedules for contracts negotiated after October 1, 1979. The deficit reduction program Unit Multipliers are provided at Tables 5 and 6. The Fund Office will provide you further information concerning the deficit reduction program upon written request.

3. Find your Unit Multiplier for Normal Retirement Benefits by referring to Tables 1 through 6. IF your Unit Multiplier is not listed on the Tables, the Fund Office will provide you with your Unit Multiplier upon written request.

4. Multiply your Unit Multiplier, as determined in Step 3, by your Credited Service. This is your estimated monthly benefit which will be paid to you each month for the rest of your life. The amount of your benefit may be reduced by the 2% penalty explained at page 14, If applicable.

5. The Plan automatically provides that you will receive the Qualified Joint and Survivor Benefit when you retire. The Plan further provides that if you wish to waive the Qualified Joint and Survivor Benefit, your spouse must agree to the waiver, in writing, which is notarized, on a form provided by the Fund Office, under this benefit your monthly benefit will be reduced, but if you should die before your spouse, your spouse will receive 50% or 100%, depending upon the Option chosen, of the benefit payable to you for the remainder of his or her life. This benefit is explained in the Section entitled "Qualified Joint And Survivor Benefit" at page 43.

Examples

Assume that you estimate that you will have earned 20 Years OF Credited Service when you retire at age 60 (your Normal Retirement Age) in 1999, and that your Unit Multiplier is $35. Multiplying 20 Years of Credited Service by the Unit Multiplier of $35 results in the monthly lifetime benefit of $700.

Assume that your Employer contributed at the National Master Freight Level contribution rate schedule on your behalf, and you estimate that you will have earned 20 continuous Years of Credited Service when you retire at age 60 on January 1, 1999. Multiplying 20 Years of Credited Service by the Unit Multipliers (for the slated

time periods) stated on Table 3, results in the monthly lifetime benefit of $1,531.50

(2)

No. 04-1707

Supreme Court, U.S.
FILED
JUL 20 2005
OFFICE OF THE CLERK

In The Supreme Court of the United States

JAMES OTTO, SHIRLEY A. OTTO, FRED P. GROVE, and ETHYL J. GROVE,

Petitioners,

v.

WESTERN PENNSYLVANIA TEAMSTERS AND EMPLOYERS PENSION FUND, BOARD OF TRUSTEES OF WESTERN PENNSYLVANIA TEAMSTERS AND EMPLOYERS PENSION FUND,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether the Respondents' interpretation of the plan provisions governing the calculation of the Petitioners' monthly pension benefits was reasonable, consistent and supported by substantial evidence, and whether the Court of Appeals committed error in finding that the Respondents' actions were reasonable and in accord with federal law?

PARTIES TO THE PROCEEDING BELOW

Petitioners, James Otto and Fred P. Grove, are retired participants of the Western Pennsylvania Teamsters and Employers Pension Fund. Shirley Otto and Ethyl J. Grove are the spouses of James Otto and Fred P. Grove, respectively, and are beneficiaries of spousal survivor benefits.

Respondents are the Western Pennsylvania Teamsters and Employers Pension Fund and the Trustees of the Western Pennsylvania Teamsters and Employers Pension Fund. The Western Pennsylvania Teamsters and Employers Pension Fund is a jointly trusteed pension fund, administered pursuant to 29 USC §186(c)(5) by a Board of Trustees. Neither of the Respondents is an affiliate of a publicly owned corporation.

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Respondents, the Western Pennsylvania Teamsters and Employers Pension Fund, and the Trustees of the Western Pennsylvania Teamsters and Employers Pension Fund, respectfully request that the Court deny the Petition For Writ Of Certiorari ("Petition") submitted by the Petitioners, James Otto and Fred P. Grove.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is reported at 127 Fed. Appx. 17 (3d Cir. 2005), and is reprinted at Appendix B (pages 3a-10a) of the Petition.

The Opinion and Order of the United States District Court for the Western District of Pennsylvania is unreported, and is reprinted at Appendix D (pages 18a-38a) of the Petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

STATUTES INVOLVED

The statutes involved are adequately set forth in the Petition.

COUNTERSTATEMENT OF THE CASE

The Petitioners filed this proceeding in the United States District Court for the Western District of Pennsylvania against the Respondents, alleging that the Western Pennsylvania Teamsters and Employers Pension Fund ("Pension Fund") and its Trustees incorrectly calculated their monthly reciprocal normal retirement benefits.

The Petitioners are retired participants from the Pension Fund, and receive reciprocal normal retirement benefits based on combined service earned with the Pension Fund and the Central Pennsylvania Teamsters Pension Fund. The Petitioners' spouses are beneficiaries entitled to survivor benefits from the Pension Fund.

The Pension Fund is a jointly trusteed pension fund administered by a Board of Trustees, consisting of ten Trustees, five of whom are appointed by the Contributing Employers, and five of whom are appointed by the Local Teamsters unions. The Pension Fund is governed by the terms of its Agreement And Declaration Of Trust and its Pension Plan, which are summarized and distributed to the participants by the Pension Fund's summary plan description booklet ("SPD").

The calculation of pension benefits is made by the Pension Fund Office, pursuant to the provisions of the Pension Plan. Pursuant to the Pension Plan, a participant is eligible for normal retirement upon attaining age 60 and earning sufficient credited service. Normal retirement benefits are calculated pursuant to the provisions of Section 4.4(a) of the Pension Plan.

A normal retirement benefit, pursuant to Section 4.4(a), is calculated by multiplying the credited service

earned by a participant by the unit multiplier(s), both determined as of the last date the participant was covered with the Pension Fund. The unit multiplier(s) is calculated by the Pension Fund Actuary, pursuant to the provisions of Appendix A of the Pension Plan, and is based upon the weekly contribution rate(s) paid by a Contributing Employer to the Pension Fund for the participants. The calculation of normal retirement benefits is summarized in the SPD.

The calculation of the Petitioners' monthly benefits are explained on the charts provided in the Stipulation Of Facts. (*See* App. 46a, ¶21 [Otto calculation] and App. 50a, ¶28 [Grove calculation]). The monthly benefits were calculated pursuant to Section 4.4(a), and the unit multipliers were calculated by the Pension Fund Actuary pursuant to Appendix A, and determined to be Freight Level unit multipliers. The various unit multipliers calculated by the Pension Fund Actuary were based on the weekly contribution rates made at the National Master Freight Level contribution rate schedule for service earned by the Petitioners with the Pension Fund and the Central Pennsylvania Teamsters Pension Fund, and were applied to the stated time periods indicated on the charts.

The case was submitted to the District Court on Motions For Summary Judgment. The parties also submitted a Stipulation Of Facts, attached to the Petition at Appendix E. (App. 39a) The Respondents, in support of their Motion For Summary Judgment, also submitted the Affidavits of Gerri Talerico (Pension Fund Office Manager) and the Affidavit of Randee W. Sekol, E.A., M.A.A.A. (Pension Fund Actuary).

By Order and Opinion, the District Court, by a Magistrate Judge, denied the Petitioners' Motion For Summary Judgment, granted the Respondents' Motion For Summary Judgment, and dismissed the proceeding with prejudice.

In reaching its decision, the District Court determined that it should apply the "arbitrary and capricious" standard in reviewing the Trustees' actions in calculating the Petitioners' monthly benefits. The District Court found that the Pension Fund's governing documents vested the Trustees with broad discretionary power in administrating the Pension Fund and making eligibility determinations, and that the Trustees had no economic conflict of interest in interpreting the provisions of Section 4.4(a). (App. 29a-31a)

In reviewing the Trustees' actions in calculating the Petitioners' monthly benefits, the District Court also found that the Trustees' interpretation of Section 4.4(a) was reasonable, consistent and supported by substantial evidence. (App. 32a)

Lastly, the District Court found that the provisions of the Pension Fund's SPD accurately reflected the calculation of normal retirement benefits as required by Section 4.4(a), and that the SPD examples explaining the calculation of normal retirement benefits were not ambiguous or contradictory. (App. 34a-35a)

On appeal, and without oral argument, the United States Court of Appeals for the Third Circuit, by a "not precedential" Opinion, affirmed the District Court's Opinion and Order.

SUMMARY OF THE ARGUMENT

The Court of Appeals did not commit error in affirming the District Court's Opinion and Order finding that the calculation of the Petitioners' monthly benefits by the Respondents was reasonable, consistent and supported by substantial evidence. The Courts below correctly resolved the factual dispute concerning two examples in a summary plan description, and found that the examples were not ambiguous or contradictory. The Court of Appeals did not commit error by refusing to apply the principle of contra proferentum, and its failure to apply the principle to allegedly ambiguous summary plan description examples did not result in a split among the Circuit Courts. Lastly, the Court of Appeals did not err in finding that the Respondents' interpretation of an ambiguous plan provision was reasonable. Thus, the decision of the Court of Appeals is fully consistent with established federal law and further review is not warranted.

ARGUMENT FOR DENIAL OF THE WRIT

THE DECISION OF THE COURT OF APPEALS IS FULLY CONSISTENT WITH ESTABLISHED FEDERAL LAW AND FURTHER REVIEW IS NOT WARRANTED.

1. THE ISSUE OF WHETHER THE EXAMPLES IN THE SUMMARY PLAN DESCRIPTION WERE AMBIGUOUS OR CONTRADICTORY WAS A FACTUAL ISSUE CORRECTLY DECIDED BY THE COURTS BELOW AND NO FURTHER REVIEW IS REQUIRED.

"Review on a writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. "A petition for a

writ of certiorari will be granted only for compelling reasons." *Id.* Petitioners' claim that the Pension Fund's SPD provisions concerning the calculation of normal retirement benefits contained two ambiguous or contradictory explanatory examples (Petition 7-9) is a factual issue that was squarely addressed by the Courts below, and was found to be without merit. This factual dispute does not present a compelling reason for this Court to exercise discretionary jurisdiction over the Petitioners' attempted appeal of the dismissal of their claim.

The SPD described the calculation of normal retirement benefits, pursuant to the provisions of Section 4.4(a) and Appendix A of the Pension Plan, and detailed the five Steps necessary in order to calculate the benefit. (App. 64a-65a) Step 2 provided in part, as follows:

> 2. *Determine your Employers' last weekly contribution rate.* The weekly contribution rate paid by your Employer determines the amount of the Unit Multiplier utilized to calculate your benefit. *Turn to Tables 1 through 6 and look for your Employer's last Contribution Rate Schedule. . . .*

(Emphasis added) (App. 65a)

Tables 1 through 6 provided the historical unit multiplier schedules, reflecting the changing weekly contribution rates, for the Pension Fund participants. Table 3 provided the unit multiplier schedule resulting from contributions made at the National Master Freight Level ("Freight Level") contribution rate schedule.

Example 1, following the five Steps, summarized the calculation of normal retirement benefits not covered by Example 2, as follows:

> Assume that you estimate that you will have earned 20 Years of Credited Service when you retire at age 60 (your Normal Retirement Age) in 1999, and that your Unit Multiplier is $35. Multiplying 20 Years of Credited Service by the Unit Multiplier of $35 results in the monthly lifetime benefit of $700.

(App. 66a)

Example 2 specifically addressed the calculation of normal retirement benefits based on the Freight Level contribution rate schedule, and provided as follows:

> *Assume that your Employer contributed at the National Master Freight Level contribution rate schedule* on your behalf, and you estimate that you will have earned 20 continuous Years of Credited Service when you retire at age 60 on January 1, 1999. Multiplying 20 Years of Credited Service *by the Unit Multiplier (for the stated time periods) stated on Table 3*, results in the monthly lifetime benefit of $1,531.50.

(Emphasis added) (App. 66a-67a)

The District Court, in concluding that the Pension Fund Trustees' method of calculating the Petitioners' monthly benefits was reasonable and supported by substantial evidence, specifically found that contributions were made to the Pension Fund on the Petitioners' behalf at the Freight Level, and that of the two Examples, Example 2 was the relevant one to explain the calculation of the Petitioners' monthly benefits.

> Significantly, in advising participants how to estimate the computation of their monthly normal retirement benefit, the 1999 SPD [page numbers omitted] provides [Example 2]. . . .

> [Example 2] in the SPD undercuts the plaintiffs' argument that the Trustees erred in applying various unit multipliers to calculate their monthly benefits instead of applying the last unit multiplier in effect at their termination dates. Section 4.4(a) of the Plan expressly provides that the unit multiplier is "determined in accordance with Appendix A" as of the "Participant's Termination Date" and in calculating the benefits for Mr. Otto and Mr. Grove, *the Pension Fund Actuary utilized the Freight Level unit multipliers in accordance with Appendix A, as summarized in the 1999 SPD at Table 3.*
>
> (Emphasis added) (App. 34a-35a)

In affirming the District Court, the Third Circuit also found that Example 2 was the relevant benefit calculation example.

> . . . [Example 2] illustrates the calculation methodology employed by the Fund in determining Appellants' benefits. Because this example is included in the summary plan description, it represents an authoritative interpretation of Section 4.4(a) and is binding on both the trustees and the plan participants. *Burstein v. Ret. Account Plan for Employees of Allegheny Health Educ. And Research Found.*, 334 F.3d 365, 382 (3d Cir. 2003) (holding summary plan description is a binding element of the plan). In sum, the trustees' methodology is a reasonable interpretation of Section 4.4(a) and is consistent with the approach explained in the summary plan description.
>
> (App. 9a)

The record is clear that the Courts below considered the two Examples provided in the SPD, and correctly

concluded that Example 2 was the relevant example, because it specifically summarized the calculation of the Petitioners' monthly benefits based on the Freight Level contribution rate schedule. Example 1 was not relevant because it did not address the calculation of normal retirement benefits based on the Freight Level contribution rate schedule. The Courts below fully reviewed the Petitioners' claim that the two Examples were ambiguous or contradictory and found the claim to be without merit. The resolution of this factual dispute by the Courts below was fully consistent with established law and further review is not warranted.

2. THE PETITIONERS' ATTEMPT TO ARTICULATE A SPLIT AMONG THE CIRCUIT COURTS CONCERNING THE APPLICATION OF THE PRINCIPLE OF CONTRA PROFERENTUM IS CONTRIVED AND WITHOUT MERIT.

Assuming arguendo that the two examples in the SPD were ambiguous or contradictory, Petitioners contend that the Third Circuit created a split among the Circuit Courts by not applying the principle of contra proferentum and resolving the ambiguity or contradiction in the Petitioners' favor. (Petition 7-9) This claim is without merit, and the Petitioners' attempt to demonstrate a split among the Circuit Courts is wholly contrived.

The Third Circuit has not applied contra proferentum where the plan administrator has discretion to interpret the terms of the multiemployer benefit plan and the standard of review is the arbitrary and capricious standard. *Ceccanecchio v. Cont'l Case Co.*, 50 Fed. Appx. 66, 73 (3d Cir. 2002). Although the Third Circuit has applied contra proferentum to the construction of a medical

insurance program, *Heasley v. Belden & Blake Corp.*, 2 F.3d 1249, 1257 (3d Cir. 1993), it has not applied contra proferentum where the plan at issue was the product of collective bargaining. *Courson v. Bert Bell NFL Player Retirement Plan*, 75 F.Supp. 2d 424, 432 (E.D. Pa. 1999), *affirmed*, 214 F.3d 136 (3d Cir. 2000).

The Third Circuit's position that contra proferentum should not be applied to interpret a benefit plan under the arbitrary and capricious standard of review is in full accord with the other Circuit Courts. *See e.g., Caidor v. Chase Manhattan Bank*, 29 Fed. Appx. 704, 706 (2d Cir. 2002); *Kimber v. Thiokol Corp.*, 196 F.3d 1092, 1100 (10th Cir. 1999); *Cagle v. Bruner*, 112 F.3d 1510, 1519 (11th Cir. 1997); *Morton v. Smith*, 91 F.3d 867, 871, fn. 1 (7th Cir. 1996); *Winters v. Costco Wholesale*, 49 F.3d 550, 554 (9th Cir. 1995), *cert. denied*, 516 U.S. 908 (1995).

The cases cited by the Petitioners do not support the claim of a split among the Circuit Courts in applying contra proferentum in cases involving the application of the arbitrary and capricious standard of review to multiemployer benefit plans. *Chiles v. Ceridian Corp.*, 95 F.3d 1505 (10th Cir. 1996), involved a potential conflict between the provisions of a long term disability plan and a summary plan description, which the Court evaluated under a de novo standard of review. *Haymond v. Eighth Dist. Elec. Benefit Fund*, 36 Fed. Appx. 369 (10th Cir. 2002) (a non-precedential opinion) involved a summary plan description that was found to be both ambiguous and contradictory, and the case was resolved under the de novo standard of review. *Hansen v. Continental Ins. Co.*, 940 F.2d 971 (5th Cir. 1991) involved an ERISA-governed insurance plan, not a pension plan. Lastly, the Fifth Circuit has applied contra proferentum only in ERISA cases construing

insurance policies, and then only as part of its unique two-step approach to applying the abuse of discretion standard. *Kimber*, 196 F.3d at 1101. *See McCall v. Burlington Northern Santa Fe Co.*, 237 F.3d 506, 512 (5th Cir. 2000), *cert. denied*, 534 U.S. 822 (2001); *Rhorer v. Raytheon Engineers and Constructors, Inc.*, 181 F.3d 634, 639-40 (5th Cir. 1999).

The argument in Section 1 demonstrated that the Courts below correctly determined that Example 2 in the SPD accurately reflected the calculation of the Petitioners' monthly benefits, and that Example 1 was not relevant to the calculations. However, assuming that the two examples were ambiguous or conflicting, the Third Circuit, in applying the arbitrary and capricious standard of review, was not required to apply contra proferentum to resolve such an ambiguity or contradiction. The Third Circuit's decision is fully consistent with the Circuit Courts which have considered this issue, and no further review is warranted.

3. THE COURT OF APPEALS DID NOT ERR IN FINDING THAT THE RESPONDENTS' INTERPRETATION OF AN AMBIGUOUS PLAN PROVISION WAS REASONABLE.

The Petitioners contend that the Third Circuit committed error in finding that a phrase in Section 4.4(a) of the Pension Plan was ambiguous, and by resolving the ambiguity in favor of the Pension Fund. (Petition 9-11)

In reviewing the provisions of Section 4.4(a), the Third Circuit noted that the District Court "implicitly concluded Section 4.4(a) is ambiguous, then expressly held that the

Fund's interpretation is reasonable." (App. 8a, fn. 5) The Third Circuit stated further that:

> Notwithstanding the parties' "plain meaning" arguments, Section 4.4(a) is ambiguous. [Footnote omitted] It simply does not speak to the relevant question – whether monthly pension benefits are calculated using a single "unit multiplier" corresponding to the applicant's last employer contribution rate, or using a variety of "unit multipliers" corresponding to the contribution rate at the relevant employment termination dates. [Footnote omitted] Faced with an ambiguous provision, we review whether the trustees' interpretation is reasonable. [*Bill Gray Enters., Inc. Employee Health and Welfare Plan v. Gourley*, 248 F.3d 206, 218 (3rd Cir. 2001)]

(App. 8a-9a)

After reviewing the record and the District Court's findings, the Third Circuit concluded that "[i]n sum, the trustees' methodology is a reasonable interpretation of Section 4.4(a) and is consistent with the approach explained in the summary plan description." (App. 9a)

The District Court reviewed the Trustees' actions in interpreting Section 4.4(a) pursuant to the arbitrary and capricious standard, based on the finding that the Pension Fund's documents granted the Trustees broad discretionary power in administrating the Pension Fund and making eligibility determinations. (App. 29a-31a) The Third Circuit found that the arbitrary and capricious standard was correctly applied by the District Court. (App. 7a)

The Third Circuit's review of the ambiguous phrase or words in Section 4.4(a), and the resolution of the ambiguity by finding that the Trustees' actions in interpreting

Section 4.4(a) were reasonable, was fully consistent with established federal law. It is well settled that under the arbitrary and capricious standard of review "[i]f the reviewing court determines the terms of a plan document are ambiguous, it must take the additional step and analyze whether the plan administrator's interpretation of the document is reasonable." *Bill Gray Enters., Inc. Employee Health and Welfare Plan v. Gourley*, 248 F.3d 206, 216 (3d Cir. 2001). The finding of the Third Circuit that the Trustees' interpretation of Section 4.4(a) was reasonable, including the Trustees' interpretation of the meaning of "Participant's Termination Date" and other words and phrases in Section 4.4(a), was correct and in accord with past precedents. Accordingly, this Court should deny the Petition For Writ Of Certiorari.

CONCLUSION

For the foregoing reasons, Respondents respectfully submit that this Court should deny the Petition For Writ Of Certiorari.

Respectfully submitted,

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